E

CHURCH COURTS

AND

CHURCH DISCIPLINE.

BY

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In causâ Dei, ubi communionis periculum est, etiam dissimulare peccatum non leve. *S. Ambrose.*

LONDON:

JOHN MURRAY, ALBEMARLE STREET.

1843.

HENRY MOZLEY AND SONS, PRINTERS, DERBY.

PREFACE.

The state of the Ecclesiastical Courts has long been a topic for censure with the enemies of the Church, and a subject of regret to its members. As early as the time of James I. it was lamented by the two greatest ornaments of the Law and the Bench. "For excommunication to be used irreverently," says Lord Bacon, "and to be made an ordinary process to lackey up and down for fees; how can it be without derogation to God's honour, and making the power of the Keys contemptible?"* Nor is Bishop Andrews less urgent. Nisi attentionem disciplinæ vestræ, id est, medicinam medicinæ apponatis, brevi pro Sione Babelem habituri sumus. Disciplina nostra jam solas crumenas pulsat, ut consulatur potius ovium attonsioni quam attensioni, et fisco quam Christo.†

It would be easy to produce similar complaints from every part of our history. Such charges have naturally excited the attention of the supreme government, and in the tenth year of King George IV. a Commission was issued to the principal officers both of the Law and the Church, empowering them "to make a diligent and full enquiry into the course of proceeding—in the Ecclesiastical Courts of England and Wales." This Commission, after being renewed with alterations by King William IV. presented a Report in the year 1832, which was printed,

* On the Pacification of the Church. † Strype's Life of Whitgift, III. 296.

by order of the House of Commons. Its recommendations prepared the way for the important measure which has since passed under the title of the Clergy Discipline Bill, and after a delay of eleven years, their full result has at last appeared in the Ecclesiastical Courts Bill of the present year. From a measure so well matured much was to be expected; and in one great particular the Bill does justice to the expectations raised by the Report of the Commissioners, for it proposes the entire removal of those temporal consequences of excommunication which have been so grievous a hinderance to its spiritual efficiency.* In this particular then, if it does not restore Church Discipline, it prepares the way for its restoration.

Its other provisions will be best understood by observing how far they meet those evils by which the spiritual jurisdiction of our Ecclesiastical Courts has been obstructed. Those evils are,

1. The multiplicity of peculiar jurisdictions, (nearly four hundred in number.)

2. The undue preponderance given to secular causes. (By many persons the Bishop's Court is supposed to exist only for the sake of probate of Wills, or the issue of licences, whereas these are only its incidental and subordinate functions.)

3. The restrictions placed by Parliament upon the exercise of Ecclesiastical Discipline.

4. The undue manner in which Ecclesiastical Jurisdiction has been entrusted to laymen.

The first of these evils the present Bill proposes to remove in the most satisfactory manner. Every Peculiar Court is to be abolished, and every Parish made part of the Diocese in which it is locally situate. The only thing which excites surprise is, that so obvious an improvement

* Vide p. 54.

should have been so long delayed, and that it should now appear as a part merely of a measure, many portions of which excite discontent and produce opposition. Why was not this introduced as a substantive Bill, instead of being saddled with questionable matter, which may involve the rejection of what all desire? The reason commonly alleged is, that Peculiar Jurisdictions have swelled the business which has flowed to the metropolis, because the Wills of those who had property in more than one district could be proved only in the Central Courts; and therefore that the multiplicity of Jurisdictions conduced to the interest of such advocates as practised near the seat of government, until they could gain the countervailing advantage which the present Act proposes, by the destruction of the Bishops' Courts. If this has really been the reason of delay, it is needless to go further for an example of the second evil, which has paralyzed our Ecclesiastical Courts. One of the worst parts of the Papal system, to which these immunities are owing, has been perpetrated—Church Discipline has been obstructed—our ancient fabrics have gone to ruin, because the interest of those who advocated private causes has outweighed the public necessities of the Church.

The second grand evil of our Ecclesiastical Courts—this undue predominance of secular causes—it is proposed to meet by transferring jurisdiction in cases of Wills and Marriages to a new Court, to be called, Her Majesty's Court of Arches. Considering that in the present state of the country, Marriages must be recognised as *legal*, which the Church does not esteem *holy*,* it seems essential that there should be a civil Court, by which the important question of legitimacy may be determined. To establish a new Court, which shall decide respecting the

* Page 63—68.

civil validity of Marriages, is clearly within the province of the State: although to decree that "the *ecclesiastical* jurisdiction heretofore exercised in any Court shall exclusively belong," or, as expressed in the margin, "be transferred to Her Majesty's Court of Arches," opens a door to claims of a more objectionable character. This evil might easily be cured by a more accurate phraseology; but not so the grand objection which is made to this part of the measure as at present conceived—its tendency to bring all business into a single centre. While on this subject, the writer cannot but remark the inexpediency of interfering with those officers, who have hitherto been employed in the Archdeacon's visitation.* He speaks of course not of the contentious jurisdiction exercised by some of these officers, but of the functions which they discharge in the admission of Churchwardens, and the general superintendence of Church fabrics. The Bill proposes that their offices should be merged in those of the Bishop's Court: an apparent concentration which will produce inconvenience without real simplification. Their duties must still be performed, since the burthen of visitation will be increased—not diminished; but instead of being performed by chiefs, it will be executed by deputies, respecting whom the Archdeacon will exercise less selection, and in whom he will place less confidence. Nor will any benefit result from the change further than the rounding off an Act of Parliament, for it confers no real business on the Bishop's Court, like that of which the residue of the measure deprives them.

On the civil effects of this system of centralization nothing need here be said, because there are parties enough to notice the inconveniences which it involves, and to complain of the injustice of making a few persons rich by

* Vide p. 74.

making many poor. But it is material to mention, what will perhaps be less enforced on the ground of private interest, that the change will involve a considerable diminution of the Church's outward respectability—the loss of ancient privileges and important patronage. The personal sacrifice to individuals may indeed be compensated ; but the loss to the institution at large must not be forgotten. If it appears however that these privileges and this patronage have obstructed one of the most important functions of the Church—if they have been a main impediment to the exercise of Spiritual Discipline, if they have secularized her Courts, and led to the diminution of her liberties*—then to be pertinacious in retaining them at the cost of a religious loss, would be to sacrifice her birthright for a mess of pottage. The Church may well relinquish privilege and patronage, if she regains the free exercise of discipline, and escapes from those limitations which have crippled her spiritual jurisdiction.

III. And this leads to the third evil, which has beset our Ecclesiastical Courts—the restrictions placed by Parliament upon the exercise of jurisdiction. These restrictions have been grounded partly upon the secular character which these Courts had acquired, and partly upon the temporal penalties, which attended their decisions. As the Bishops' Courts are by the present Act to be finally freed from both these grounds of suspicion, they will regain, it may be supposed, the freedom which had been unwisely sacrificed for worldly advantages. This appears to be the condition of the sacrifice: they are to renounce much worldly influence, and resume their spiritual authority.

And here is the great anomaly of the present measure. The loss which the Church is to undergo by the Bill is

* Vide p. 61.

obvious, but what is she to gain? Is her Spiritual Discipline to be freed from the fetters which have impeded it? She abandons her temporal guarantees, but is her religious jurisdiction to assume its pristine course? Nothing of the kind seems thought of. The Royal Commissioners indeed had recommended that the 27th Geo. III. c. 44., which at present prevents all exercise of Ecclesiastical Discipline,* should be repealed,† but this is almost the only part of their advice of which no notice is taken. So that the Church is to surrender her worldly influence, but not regain her spiritual power; she loses her pottage, but her birthright is not restored.

So far then as regards this third evil of Ecclesiastical Courts, the Bill before us makes no attempt at its removal. The mischief remains just where it was before.

IV. The same cannot be said of the fourth cause which has destroyed their efficiency: this instead of being left as it was, is to be aggravated tenfold. The power of the Archbishop, when any circumstance prevents him from judging in person (as in practice would commonly be the case) or when a clergyman is proceeded against of whose preferment he is himself patron, is to be necessarily vested in three laymen. The Bill does not leave it to the Archbishop to employ laymen if he thinks it expedient; he has no option as to the hands to which he entrusts such authority, as in person he cannot exert. The necessary conditions for the Committee who are to approve or reject what has been decided by all the Bishops' Courts in England, are the "being, or having been, an Advocate of Her Majesty's Court of Arches, of ten years' standing at the least; or being, or having been, a Sergeant-at-law, or a Barrister-at-law of fifteen years' standing at the least."‡ Now it may seem perhaps that this is justified in principle

* Vide p. 49. † Report p. 6. ‡ Sec. 129, 130, 131. vide inf. p. 95—7.

by the practice of appeal to the Privy Council or the House of Lords. If laymen, it may be said, decide in one case, why not in another? But the exclusive employment of lay judges, even in the highest Court of Appeal, is contrary to the principles of the British Constitution, and even to the practice which was sanctioned by the last act of Parliament.* And were it otherwise, the appeal to the Crown is not altogether parallel to the decisions of the inferior tribunals. It is merely that watchful interference by which the highest power in the kingdom sees that every institution in the Country is dealing fairly according to its own laws. The state interferes to compel the father of a family to maintain his children; but it leaves many things to a father's own decision, as being of a kind which none but a father can decide. This appears to be the first instance in which it is proposed that the State should step in, and take *the parental office itself* from those Fathers of Christ's Church, to whom immemorial usage has assigned it.

In making these remarks, no censure is intended against the parties, who have introduced the present measure. They have had to consider not what themselves abstractedly preferred, but what Parliament was likely to sanction. But when measures are on foot, so seriously affecting the Church's interests, it is high time that Churchmen should assert the true purpose of those institutions, which it is proposed to subject to such arbitrary alterations. While the question is in suspense, and before it is sealed up for another century, it is essential to bear public testimony to the real duties of Courts Spiritual—duties, which the Church as plainly forbids them to neglect, as the State to discharge. If at this crisis their proper functions be not remembered, what hope is there,

* Vide p. 93.

that any modifications which they undergo will be other than prejudicial.

If the Church's laws then cannot be vindicated by acts, they ought at all events to be maintained by protestations. "Pulchrum est benefacere reipublicæ, etiam benedicere haud absurdum est." Nor is this all. There is another question, from which the present measure renders it impossible any longer to avert our thoughts, what powers of re-construction the Church possesses, and whether her inherent resources can furnish any new organs in the place of those, of which she has been bereft. Church Discipline, the real deficiency in our system, must either be attained by a reform of existing Courts, or the substitution of new ones. Now if this measure contains all that is to be expected from the Legislature, it is manifest that the former alternative is absolutely hopeless. Till its appearance, such an assertion might have seemed premature; but if this bill becomes a law, the Ecclesiastical Courts, viewed as spiritual tribunals, will have been changed but not amended; if it be rejected, what better hope will there be of their real reform? If Parliament then can do nothing towards this object, has the Church no resources of her own? Has she no innate vitality out of which to develope a fresh organization? Is it not wise to consider what provision can be made for the future before the past is allowed to go away like a dream.

The present state then of Church Courts, their past history, their real objects, and the possibility of their restoration, are discussed in these pages. And if the question be one on which it would be idle to touch without being prepared for much difference of opinion, it has yet this signal advantage, that it has not been the battle scene on which conflicting parties in the Church have encountered, and that as yet therefore it has been exempted from the strife of tongues. To this circum-

stance even more than to his own freedom from any sectional associations,—calling no man Master, and knowing no party but the party of the Church—does the writer look forward as securing a dispassionate consideration for the important interests on which he trusts. He has to regret indeed that his circumstances forbid that extent of research, or that fulness of preparation which the subject deserves. But if it is long since he enjoyed those advantages—by no one more valued—of leisure, conference, and investigation which are afforded by the retirement of our ancient universities; if he can offer nothing therefore but what has been produced amidst the few intervals of a busy life, he may at all events aver with the more confidence, that his opinions are not derived from a mere antiquarian partiality for the practices of a past age, but from an actual observation of the necessities of our own.

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ERRATA.

Page 30, line 2, *for* Bold, *read* Bald.
Page 47, line 1, *for* Santæ, *read* Sanctæ.
Page 73, line 29, *for* least, *read* last.
Page 3 and 19, *for* Hymeneus, *read* Hymenæus.

CHAPTER I.

Scriptural argument for the necessity of Church Discipline.

WHAT the Discipline of the Church is, and what it ought to be, how much can be effected, and how much is to be desired—are points in the due determination whereof all its members are interested. Their attention is yearly called to it by the Prayer-Book, which, while it asserts of the rest of the system which it embodies, that it is "fairly defensible against any that shall oppose the same," declares that in this one particular there is wanting among us something "greatly to be desired." Let us see then how far our practice is conformable to that rule of GOD'S word, which we profess to follow, or if we have hitherto failed in exact obedience, as our own Liturgy seems to indicate, whether lapse of time is at all events bringing us nearer to the standard of perfection.

The first reference is of course to scriptural authority. The case is one in which a decision was given by an Apostle.

"It is reported commonly that there is fornication among you, and such fornication as is not so

much as named among the Gentiles, that one should have his father's wife. And ye are puffed up, and have not rather mourned, that he that hath done this deed might be taken away from among you. For I, verily, as absent in body, but present in spirit, have judged already, as though I were present, concerning him that hath so done this deed. In the name of our Lord Jesus Christ, when ye are gathered together, and my spirit with the power of our Lord Jesus Christ, To deliver such an one unto Satan for the destruction of the body, that the spirit may be saved in the day of the Lord Jesus."*

On how few practical questions of a public nature have we so conclusive a precedent as this. The manner of ministering the Lord's Supper—the persons who shall dispense it—even the fact that it is to be repeated, while the contemporaneous washing of the Apostles' feet was an act which had its consummation in its first performance—the baptism of infants—the assignment of the season of rest to the Lord's day—those who on these points desert the Church's usage complain that they need some distinct rule or example from the Apostles. Here is an instance—precise—applicable—undisputed. Let us observe some of its particular features.

The decree at Corinth was to be given by the collective authority of the ecclesiastical body. It

* 1 Cor. v. 1–5.

is not our present inquiry by whom such sentence was to be pronounced, but the Apostle himself, "absent in body, but present in spirit," was no doubt the authority on which the decision must depend. So much is plain: *there was to be a public sentence.*

2. The sentence so given was to deliver the guilty party to Satan. That this is no unmeaning phrase, but has some terrible though mysterious significancy, we see by the repetition of the same expression respecting Hymeneus and Alexander.* The words connect themselves with what we are told respecting man's natural estate, that "the Prince of the power of the air" is "the spirit that now worketh in the children of disobedience." From his thraldom men are rescued by that holy rite, by which they are "baptized into one body," whereby they are "delivered from the power of darkness, and translated into the kingdom of GOD'S dear Son."

What temporal evils might follow from Satan's rule, whether it was that power over men's bodily organs, of which in our Lord's days there were such frightful examples, we are not told. Enough, that *separation from the communion of Christians was an expulsion from the Church's holy limits;* it was the being counted, our Lord tells us, "as" the "heathen,"† and it left men under their original subjection to Satan's power.

* 1 Tim. i. 20. † St. Matt. xviii. 17.

3. In what a solemn manner does St. Paul enforce this deed—"In the name of our Lord Jesus Christ." The appeal did not want its effect: the whole Christian congregation acted upon his order, and separated from the company of the offending member. *Church censures were pronounced with solemn earnestness, and obeyed with implicit veneration.*

4. The whole Corinthian Church had been previously involved, it would seem, in the guilt of countenancing what it had not censured. How severe are the words of the affectionate Apostle: "Shall I come unto you with a rod, or in love and the spirit of meekness?" "Ye are puffed up, and have not rather mourned, that he that hath done this deed may be taken away from among you." The *neglect of Church Discipline is the Church's sin.*

These points require the more notice, because, like every rule which has been habitually broken, they have almost ceased to impress men's minds. Let it be supposed for a moment that this Epistle to the Corinthians was now for the first time discovered to be the work of St. Paul, and to be entitled therefore to take rank in the Canon of Scripture. Should we not hear such expressions as these?

Here is a rule laid down for the conduct of the Corinthian Church. The Church is the selfsame body which she was from the first, and she cannot therefore inherit the advantages with which our

Lord endowed, unless she acts upon the rules which He delivered to her. In what respect then does the Church of England conform to this rule of Apostolic times? Like Corinth, commercial, wealthy, and luxurious, our cities contain too many notoriously contaminated with Gentile crimes. But do we ever hear of public sentence against such offenders? From year's end to year's end, is any one separated by formal decree from the Christian kingdom? Surely the Church has never heard of the affectionate yet earnest expostulation of the Apostle. He would not otherwise have appealed in vain by that most solemn name, whereby we are called.

Suppose that with such feelings an enquirer were to direct his attention towards various parts of our civil and religious system. Let him survey the prevalent neglect of GOD'S service in the peopled wilderness of our factories. Let him calculate the rapid increase of pauperism and crime. Let him hear the blasphemy by which the ear of heaven is habitually provoked, and witness the open profligacy of this Christian land. Let him read of thousands who never enter Christ's Church but in arms or on the bier. And would not the thought occur, that the withdrawing of GOD'S blessing is the necessary consequence of neglecting GOD'S commands, and that our acquiescing in a practice so unscriptural, may be the cause of our suffering under such accumulated ills?

A large part of our countrymen, if addressed in

such words as these, would reply that they had such confidence in the general *well-working* of the Church system, that they were indisposed to any alteration; and were contented to trust themselves and their hopes to the wisdom of those institutions, which were handed down by their Fathers. The answer is far from unreasonable. It is as wise to maintain things merely because they exist, as to abandon them merely because we cannot at present discover their object. And what considerate man can study the system of our Fathers, without perceiving that since what was done was done wisely, what was left undone was not always forgotten. But was the present state of Church Discipline introduced and approved by our Fathers? Has it the sanction of their laws? Is it conformable to their precedents? Or is it merely the child of that religious indifference, which grew up among us during the last century? Should this prove the case, why need we acquiesce in it, more than in any other abuse which it has been the effort of later days to amend?

Let us look then to the rules of the Church of England, and to the practice of its chiefest worthies.

To collect all that her laws and customs supply, would not be conducive to the present purpose, and has been already effected by others.* Some

* Nowhere probably so well as in the Appendix to the Rev. Charles Wordsworth's Sermon on Evangelical Repentance, (Oxford, 1842,) to which, without wishing to pledge himself to all its views, the writer would here in general profess his acknowledgments.

simple passages, distinctly illustrative of her intentions, will bring the subject more home to men's thoughts. The matter cannot be more summarily exhibited than by a reference to the Canons which were adopted by Convocation at the commencement of the reign of James I. But since these Canons, though admitted on all hands to bind the clergy, have never been imposed on the residue of the Church by their lay representatives, they will not be quoted except when they revive what had virtually been enacted, or was practised during the preceding reign. They are cited as indicating a practice, not as originating a law. But inasmuch as this is the rule which, even according to the opinion of Lord Hardwicke (Middleton v. Crofts*) the clergy are bound to obey, their teaching must manifestly follow the line which its directions suggest. They are bound therefore to urge the Laity to obey those rules as matter of conscience, which as matter of law they may have neither will nor authority to enforce.

Let us begin therefore with the 22nd Canon. "Every lay-person is bound to receive the holy Communion thrice every year."

Here is a general rule for men's guidance, which would indicate at once who were and who were not in the communion of the Church. This however was no new rule, having been imposed already upon the whole body of Churchmen by the Act of Parliament which sanctioned the Prayer-Book.

* Preface to Burn's Ecclesiastical Law, xxxiv, xxxv.

"Every parishioner shall communicate at least three times a year."* And therefore the 22nd Canon speaks of this custom as one which could be already enforced :—"which said warning we enjoin the said parishioners to accept and obey under the penalty and danger of the law."

While this rule would render it impossible for Churchmen to withdraw themselves altogether from the notice of the Church's ministers, the Rubrics before the Holy Communion and the 26th Canon would render it equally impossible for any to communicate who were living in open sin. By the first Rubric every person intending to communicate is bound to signify his name to the Curate "at least some time the day before." And no "open and notorious evil liver" is to be admitted, till he hath "repented and amended his former naughty life." By this means was the condition of every one to be brought to a crisis, and those who continued in deliberate sin were separated by open sentence from the Church's body. For this purpose a form of excommunication was set forth by the Convocation of 1571. After reciting the nature of the offence, it proceeds, "and since the aforesaid A. B. through consciousness of his guilt, has neglected to appear on the day lawfully assigned him, and has withdrawn himself contumaciously from justice, and by his example has incited others to the like contumacy, therefore I would that you

* Rubric after Communion Service.

should know that our Bishop, in the name and by the authority of Almighty GOD, has cut him wholly off from communion with the Church of GOD, and separated him as a dead member from Christ's body. This is his present state, this is his soul's great danger. St. Paul, admonished by the Holy Ghost, orders us to avoid such men's company and intercourse, lest we be partakers of their sin. Yet as Christian charity warns us, since he will not pray for himself, nor understand his danger, let us all pray God in his name, that he may at length discover the misery and deformity of his life, may do penitence and be converted to GOD: our GOD is merciful, and can recall the fallen even from death."*

Such was the ordinary process by which open sin was held in restraint. All which enactments however would be absolutely useless, unless the Law was accompanied by some provision which should secure its execution. Unless there be what the great Burke calls an *executive principle*, mere enactments are ineffectual. Such a principle therefore was supplied by the oath annually exacted from Churchwardens, and by the order given in the 20th Canon excluding from the Holy Communion "any Churchwardens or Sidesmen, who having taken their oaths to present to their ordinaries all such public offences, as they are particularly charged to inquire of in their several parishes,

* Wilkins's Concilia, vol. iv. p. 268.

shall (notwithstanding their said oaths, and that their faithful discharging of them is the chief means whereby public sins and offences may be reformed and punished) wittingly and willingly, desperately and irreligiously, incur the horrible crime of perjury, either in neglecting or in refusing to present such of the said enormities and public offences, as they know themselves to be committed in their said Parishes." And as a further safeguard the 65th Canon directs that "all ordinaries shall in their several jurisdictions carefully see and give order that as well those who for obstinate refusing to frequent Divine service established by public authority.....as those also who for..... notable crimes stand lawfully excommunicate..... be every six months ensuing as well in the Parish Church as in the Cathedral Church of the Diocese in which they remain, by the Minister openly in time of Divine service upon some Sunday, denounced and declared excommunicate.".....

The more to impress this duty upon those in our highest offices, it is solemnly required of every Bishop, in the face of the Church, "whether you will correct and punish such as be.....criminous within your Diocese according to such authority as you have by GOD's word, and as to you shall be committed by the ordinance of this realm." Those who have answered, "I will do so by the help of GOD," could not refrain, it was thought, from enforcing such part at least of discipline as the declarations of Holy Scripture committed to their care.

And in this work the whole Church was on the same occasion pledged to assist by the solemn prayer in which all the congregation intreat GOD for "all Bishops, the Pastors of Thy Church, that they may.....duly minister the godly discipline thereof."

Can it be said that the authors of these laws give any sanction to the laxity of our present practice? Have we not a complete system devised, by which any fault may be brought to light, condemned and punished? Were not St. Paul's rules on this subject the rules also of the Reformers? Whatever excuse therefore may be made for our present practice, it must not be sought at all events in the regulations of our ancestors. Nay we have their express declaration, not only that a different practice would be right, but that our present is absolutely unlawful. The Homilies inform us what are the criteria by which a true Church may *always* be recognized: "it hath always three notes or marks whereby it is known: pure and sound doctrine, the sacraments ministered according to Christ's holy institution, and *the right use of ecclesiastical discipline.* This description of the Church is agreeable both to the scriptures of GOD, and also to the doctrine of the ancient Fathers, so that none may justly find fault therewith."*

And is this indeed the judgment of our Reformers? Was it to this that such men as Jewel

* Second part of the Homily for Whitsunday.

and Parker set their hands? Whatever opinion then we entertain, and it is to be hoped, entertain rightly, that our failure in this last particular may not altogether forfeit our claim to be the heritage of the Lord, it is clear that the judgment of those great luminaries whom our Church has been used to regard as authorities, would declare her absolute forfeiture of her peculiar blessings. Their sentence also is not a mere passing ebullition, drawn forth from the dust of libraries by an antiquarian research into the transitory literature of their day, it is solemnly embodied in one of the public formularies of which every minister declares his approbation, and it is sanctioned by the prayers and promises amidst which every prelate takes his place upon the seat of the Apostles.

This deliberate judgment of the English Church needs no confirmation from the opinion of Continental Divines, who, whatever may be thought of their character and abilities, have no claim upon our obedience. Yet as this is a case in which men's acquiescence is in great measure commanded by the custom of the day, it may be well to remember that the lax usage of the present generation is no less at variance with the opinion of those to whom other communities profess to defer, than with the standard authorities of the English Reformation. In the year 1544, the Elector of Saxony, by way of preparation for the Council of Trent, called upon the principal Protestant Divines to make "such a statement of their whole plan for

the reformation and government of the Church as by GOD'S grace they would finally stand to." Thus consulted, the leading divines assembled, including both Luther and Melancthon, of whose ready pen they availed themselves in order to express in five articles their deliberate opinion respecting the essential points of a "true reformation and government of Christ's Church." The three first were "true doctrine," "right administration of Sacraments," and "an authorized ministry:" the fourth essential they held to be "the maintenance of a pious discipline by ecclesiastical tribunals, or ecclesiastical jurisdiction."*

If the practice of the present day finds countenance then in other countries, yet the principles on which other societies are founded, do but confirm those maxims to which we are so solemnly pledged by the reformers of our own ancient communion.

To demand therefore that their laws should be no longer a dead letter, suggesting to the clergy duties which they cannot perform, to require that we should either promise nothing or attempt something, that we should either professedly renounce the standard of the reformation, or conscientiously maintain it—this is no innovation; it is that which every clergyman is already bound to attempt, and which no layman therefore can reasonably oppose. We come back then to our first ground,—the

* Seckendorf's Hist. Luth. L. iii. S. 31. § 119.

enactment of the Apostles. What excuse can we make for its neglect? we have no sanction from the worthies of our own Church. We can find no countenance from the oracles of GOD. This is not a practice maintained only by the dubious authority of tradition, or by the exaggerated opinions of the Fathers. It is no dream of Jewish form or Gnostic fable. The Apostle of the Gentiles speaks the word. The first generation of Christians obeys it. The fathers of our own reformation attest its necessity. The Church of England positively demands it. And shall fashion render us indifferent to its neglect?

CHAPTER II.

Historical account of Church Courts, showing the causes which have led to the decay of Church Discipline.

TRADITION is so powerful a principle, as may be seen by the example of the Jews of old, that the public mind cannot be at once disabused of its influence. Yet the scriptural sanctions which have been quoted are so express, and the declarations of the Church of England so pointed, that opposed as they are to modern usage, they can hardly fail of raising some doubt whether the practice of the present day on the subject of Church Discipline is defensible. Let us proceed then somewhat further, and examine the origin of those traditions, which are as plainly our sole justification for abandoning the principles of the New Testament, as the transmitted dicta of their Rabbins, for the Jewish inattention to the Old one. This inquiry will at least have one good consequence. It will tend to destroy that lurking opinion, which without being formally expressed is the real prejudice by which many good men are indisposed to Church Discipline—that its assertion is in some way or other connected with Popish principles,—its abandon-

ment with the maxims of our Reformation. True, the necessity of Church Discipline was avowed as plainly by Cranmer and Ridley, as by Boniface or Hildibrand; it was exercised before the errors of Popery were introduced, it has been exercised since they have been discontinued. Yet there will be those who, though they cannot deny this truth, will yet continue to assert or believe its opposite; for when a popular prejudice is involved, to confute men, is not always to convince them. To show then the circumstances which have led to the present abuse, especially if they can be traced to a false principle, recently abandoned, will mitigate the alarm of those who with the nation at large entertain a just affection for the Reformers, and will also encourage the hope that the noxious root having been destroyed, the pernicious fruit may at length be got rid of.

Church Discipline then is no more a Popish practice than the ancient habit of standing during prayer from Easter to Pentecost, or the more recent one of fixing an hour-glass in the pulpit. Its disuse is no more to be referred to the Reformation, than the discontinuance of the other two practices which have been mentioned. It arose before Popery, and it has outlasted it. For *its origin was the Institution of* God*; it has been disused, because it became the slave of human policy.*

There are two authorized institutions in the world, as there have been two revelations; the first to the founders of the human family, of which

GOD's natural providence is the sequel; the second, which is in like manner guarded by His sacramental presence, is His series of disclosures to the Abrahamic race. These two revelations have their expression in two mighty institutions which divide the world—the first is the constituted order of civil society, the developements of the family relation as it shows itself in all the complicated varieties of civil or national government—the second is GOD'S Christian Kingdom of the Church. But the details of the first institution have been left, under the guidance of GOD's natural providence, to the workings of that plastic nature of which He has moulded the family of man. Its ultimate obligation is from above, its actual arrangements are of human invention. The second had its pattern in the mount, and is a reproduction upon earth of a heavenly original. Of this, one part was that holy discipline which was exercised by the Apostles. Now nothing hinders but that these two institutions may mutually co-operate; and the most perfect state of society is when the enactments of the one are most in harmony with the obligations of the other. But if by lapse of time they should be so blended, that their separate origin should be lost sight of, should they be supposed to have their original from a common source, and consequently to be regulated by a common law—then the constituent parts of the one would be endangered by being resolved into those of the other. And this has been the case respecting Ecclesiastical Disci-

pline. In its origin it is a part of the Divine rule of the Church. But it has been treated as though it took its rise from the appointments merely of society. Its true object is the salvation of souls. But the security of the state has been the end proposed to it. For the spiritual sanctions which should attend, it has been guarded by the doubtful weapons of human coercion. Instead therefore of being hailed as the friend, it has been dreaded as the destroyer of social peace. As GOD'S ordinance it was the greatest blessing, as man's enactment it became the most intolerable curse. All this has happened, not, be it remembered, for the advancement of religion, not for the benefit of the Church, but as a means of bolstering up the security of thrones, and the individuality of states.

To trace the course by which all this has been effected will at once obviate the objection of all fair men against a due system of Church Discipline, and will show likewise that the changes recently made in our civil institutions have removed those unhappy impediments, by which its enforcement has of late been prevented. The inquiry will resolve itself into an examination of the judicial process, which has been adopted by the Church. Now of Courts there are two kinds, answering to those two institutions which have been mentioned, Courts civil, namely, and Courts Christian or ecclesiastical. Respecting the first of these, there is here no inquiry. Their history is to be traced in the venerable halls of Westminster, or earlier still

amidst the perpetual gloom of the German Forests. Their majestic sanction is the immemorial usage of primeval nations, the unwritten equity imprinted by the hand of the Most High on the consciences of our forefathers.

The origin of Courts Christian or ecclesiastical is different. They refer their commencement to the written Word of GOD, as recorded in the New Testament. They are not referable, as some have idly imagined, to the influence merely of the Roman Pontiffs, but to the institution of the Apostles and the authority of Christ. Into this country indeed they were finally brought by the Missionaries of Gregory, but it was as a portion only of those institutions, which, after the partial destruction of the British Church, were then communicated to our Saxon ancestors. Their authority was at that time of the growth of centuries. It had been exercised by the Apostle St. Paul, when he separated Hymeneus and Philetus from the Christian fold. It was exerted at Corinth in the signal instance already mentioned. St. Paul's injunction to "obey them which have the rule over you and submit yourselves, for they watch for your souls as they that must give account," shows that power was lodged somewhere in the chiefs of the Christian community. In various other passages is the same lesson inculcated. "The elders that rule well account worthy of double honour." That such power had been committed to their religious chiefs no party for many years after the Reformation denied,

and no Episcopalian will question the declaration so confidently made by St. Ignatius, that this power was lodged with the Bishops of the Church. To them was intrusted separation from or admission to the Christian Communion; they kept the roll of the faithful, and could diminish or augment it. Thus we read of Marcion, as ejected from the Church's Communion by his father, the Bishop of Sinope, and other instances could be produced in early time were their accumulation needful. This rule of the Bishops is called by St. Cyprian* "the sublime and divine power of governing the Church," and their right of ejecting men from its Communion he calls, "that spiritual sword, whereby they slay the proud and contumacious."†

The same principle appears in all the writings of that age. The Council of Laodicea calls their authority an "Empire," and the 47th Canon [so called] of the Apostles enjoins the deposition of a Clergyman who unjustly accuses his Bishop, because it is written, "Thou shalt not speak evil of the ruler of thy people." In like manner does Origen mention "Senators and rulers over GOD'S Church," and St. Chrysostom, in his Homily (xv.) on the 7th Chapter of the 2nd Epistle to the Corinthians, enters at large into the nature of their power. "There are two kinds of authority, by one whereof men rule over people and cities, and sustain the framework of civil society. To this St.

* Cyprian Ep. ad Cornel. lix. † Id. iv.

Paul referred when he said, 'Let every soul be subject unto the higher powers, for there is no power but of GOD, the powers that be are ordained of GOD.'.....But there is a second power higher than the political one, of which St. Paul said, 'Obey them that have the rule over you, and submit yourselves, for they watch for your souls as those that must give account.' This power is as much exalted above that which is merely political, as the heaven is higher than the earth. Yea, far more so. For the one seeks only to punish crimes, but the other to prevent them. It does not aim either at destroying the sinner, but at eradicating the sin. Besides it does not look merely to this world, but has its object above."* It is needless to give further instances of a mode of judging which knew of no exceptions. It may be seen in the universal agreement respecting the meaning of those passages of the Psalms and of Isaiah's prophecy, which speak of the glories of Christ's kingdom, and of the officers who should be attendant on His state. As Christ was the King who was to reign in righteousness, so His Apostles and those who succeeded them, were universally taken to be the "princes who should rule in judgment." "These words," says Eusebius,† "refer to Christ's divine coming, for He is the only righteous King, who has appeared among mankind. And His Apostles by the judgment of their own king, ruled over His

* St. Chrys. x. p. 548.

† Euseb. Com. in Hesaiam. in Mountf. Collec. Nova, vol. 2, p. 481.

Church." And so likewise did they understand the prediction, "instead of thy fathers thou shalt have children:"* the Gentile strangers, i. e. coming to the Church, and born in her anew, are constituted her Fathers, and chosen to the sacerdotal office.† And for this reason were the Bishops' Sees called their thrones, as is universally the rule in the Ecclesiastical Histories of Antiquity, and hence that title of Lord, which is prefixed to their names in all ancient documents, and has been preserved even to modern times.‡

All these expressions arise out of the principle that the right of judging spiritual causes, the

* "Instead of thy Fathers thou shalt have children. The Apostles were thy Parents, they were sent out, they preached, they were thy Fathers. But could they continue with us in the body for ever? Although one of themselves said, I desire to depart and to be with Christ, which is far better, nevertheless to abide in the flesh is more needful for you. He said this indeed, but how long could he remain here? Could he continue to this time? could he continue for ever? Is the Church then left destitute by their departure? God forbid. Instead of thy Fathers thou shalt have children. What does this mean? The Apostles were sent as thy Fathers, and instead of thy Fathers thou hast had sons born, thou hast received Bishops. For whence sprung the Bishops, who are found at this day throughout the world? The Church herself calls them Fathers, the Church was their Mother, and herself has placed them in the Fathers' seats.....Instead of thy Fathers thou shalt have children, whom thou mayest make Princes in all lands. This is the Catholic Church: her sons are made Princes throughout all the earth; her sons are made to her for Fathers. Let those who are separated discern it, let them come to the Church's unity, let them be brought into the King's Temple. His Temple God hath reared in every place, the foundation of the Apostles and Prophets hath He every where laid. The Church hath borne sons, and in their Father's room hath made them Princes throughout all the earth." —St. Augustine Enarratio in Psalmum, xliv.

† Eusebius Cæsar. in Hickes's Dig. of Sacerdotal Office, vol. 2. 65.

‡ Vid. Hickes on the Dignity of the Episcopal Order, 2. 90.

power of adding men to the Church or rejecting them, was lodged in the Bishops as its spiritual Princes. They held court and gave judgment in religious cases, as in matters temporal did civil rulers. To this is Constantine said to have referred in his address to the Bishops assembled at Nice, "GOD," he told them, "hath appointed you to be priests and princes to judge the people, and determine causes, and hath described you to be GODS, as being more excellent than all other men."*

As yet however we have no mention of any compulsory decisions made by such authority, except in religious causes; in these their decrees were binding on their spiritual subjects. But besides this power of which they were possessed, as the administrators of GOD'S kingdom, they had likewise been the arbiters whom the members of their communion had been accustomed to employ for the settlement of temporal disputes. This character was totally distinct from that previously mentioned. As arbiters they exercised no authority except over those who chose to consult them, as spiritual Princes they gave or took away the benefits of Christian communion as they thought meet. The latter was a compulsory, the former a voluntary jurisdiction. Yet this last was of wide extent; for as Christians had been forbidden by the Apostle to carry their suits before the Gentile† Judges,

* Hickes's Dignity of Epis. Order, 2. 31.

† Do you set them who are least esteemed in the Church, i. e. the Gentiles, to judge?

they referred the great majority of causes to arbitration. And for such an office the Bishop, as the chief man in the Church, was naturally selected. The Apostle's order however was not understood as necessitating submission to every degree of injustice, as neither had he himself refused in all cases to avail himself of his civil rights, and therefore in the celebrated instance of Paul of Samosata, we see the Christian community appealing in support of its decisions to a Heathen Emperor. The ordinary practice however was for Christians to acquiesce without opposition in the determination of the Church's rulers.

But the command of the Apostle became inapplicable so soon as the civil power passed into the hands of Christians. It was no longer before unbelievers that the cause was to be heard. No religious reason existed therefore why ordinary causes should be submitted as had been usual to the Bishop's decision. But civil reasons now arose to multiply such references. In the distracted state into which the empire speedily fell, when all the old forms of authority were fast crumbling into ruin, its vigour and union turned men towards the Church, as the natural renovator of the age. It has been disputed whether the declaration of Sozomen be accurate, that Constantine allowed "litigants to appeal to the decision of the Bishops, if they preferred that tribunal to the civil courts, and decreed that their determination should be as

final as though it were his own, and that his officers should enforce it."* But so much is apparent, that the Bishop's courts speedily grew in influence, and were more constantly frequented. Hence the frequent complaints of Bishops in the fourth and fifth centuries respecting the amount of secular business by which they were overwhelmed. St. Ambrose speaks of it indeed as a burthen, which in certain cases might be escaped,† yet as that which he was not permitted by the Apostle's precept altogether to decline.‡ And so likewise speaks St. Augustine, referring to the order, "if a man compel you to go a mile, go with him twain."§ "We cannot answer," he says, "who made me a judge or a divider over you, for he who forbade Christians to contend in the forum referred such disputes to spiritual arbiters."‖ And so burthensome was this service, which custom seemed to have invariably imposed on every Bishop, that Synesius, about the same period, speaks of it as his reason for declining an Episcopal trust, that he was unequal both by constitution and pursuits to the anxieties of civil care.¶

Indeed though St. Chrysostom** speaks of the Bishop's jurisdiction as still extending merely over those who were willing to submit, yet it is manifest from St. Augustine, that in his time their courts was already armed with some coercive

* Sozomen, i. 9. † Offic. 2. 24.
‡ Ep. 14. § Ep. 81 ‖ In Psalm 118.
¶ Syn. Ep. 12. ** Hom. 2 in Tit.

power. He speaks of stripes* as a common penalty. And now therefore it was, whether from the amount or the secular nature of their duties, that the office of judging in the Bishop's Court was intrusted by them to others, and that these delegates were sometimes chosen out of the Laity. The Historian Socrates tells us of Silvanus, a Bishop of the 5th century, who used to appoint some layman of known equity to decide causes for him ;† and it is recorded by Sulpicius Severus that St. Martin was wont to spend all his time in solitary meditation, while some of his presbyters sat in an adjoining apartment hearing causes.‡

The jurisdiction here referred to was not of a spiritual kind, but fell into the Bishops' hands from the disorganized state of the empire, and if not granted to them by Constantine, was certainly conceded by later Emperors.§ Their authority was increased tenfold by the mighty convulsions which shortly afterwards rent to pieces the Roman world. When every other tie of connexion was dissolved, the attraction by which all the Christian community gravitated to their ecclesiastical centre, became still more predominant. This mode of cementing together the incoherent mass of modern society did not escape the penetrating observation

* —virgarum verberibus. Qui modus coercionis sæpe in judiciis solet ab Episcopis adhiberi. Ep. 132.

† Socrat. vii. 37. ‡ Sul. Sev. Dial. 2.

§ The Privileges conceded to Bishops' Courts by Justinian, are enumerated by Guizot.—Civilization en France, Lec. 12.

of Charlemagne. He added therefore to the civil authority of the Church's rulers, and though he reserved a final reference to himself,* yet he forbade the clergy to appeal to the ordinary civil courts from that of their Bishops.

The pretension of an immunity from the civil courts had not yet been generally asserted. In the body of Canons,† which Pope Adrian presented to Charlemagne at Rome, A. D. 774, and which contains therefore what was then regarded as a full summary of the Church's rules, there is no appearance of any exemption of the Clergy from their country's laws. On the contrary, we find a repetition of the African Canon, "ut a Imperatore postuletur advocatorum defensio pro causis ecclesiæ."‡ But the exemption of the clergy from civil controul was greatly favoured by the predominant principle of the age, when each of the various nations which were intermingled on every soil in Europe, had its separate system of laws, to which only its members gave obedience. If the Romans were to

* Capitulum de Episcop. Harduin's Concilia, iv. p. 956.

† This collection was one of great interest, having been ever since received both in France and Germany, as the authoritative declaration of the opinions of the early church. It is reprinted therefore in the collection of the German Councils, with this statement, "Here closes the codex of Canons of the early Church, put forth in the oldest councils, and presented by Pope Hadrian to Charles the Great, from the Archives of the Roman Church, for the use of the western Churches, that is, of the Churches in King Charles's Empire, namely, those of Germany, Bavaria, Noricum, Belgium, and Gaul."—Vide Hartzheim's Concilia Germaniæ, i. p. 234.

‡ Harduin, iii. 2050.

be judged according to the ancient rules of the Emperors, and the barbarians by the customs of the North, if the Salic, Saxon, or Burgundian code was to be referred to, according to the origin of those whose cause was in agitation, why should not the clergy, likewise, appeal to courts where those maxims prevailed which they were wont to advocate? The rules also which are contained in the Pontifical Capitula often commended themselves by their equity and wisdom, and were the medium by which the best principles of Roman jurisprudence leavened the uncertain mass of Gothic precedents. The following are among the Capitula of Pope Gregory, promulgated shortly after the delivery of that code to which reference has been made, A. D. 785.*

XXII. No Bishop may judge or condemn a clerk, unless the accused has his accusers face to face, and has opportunity of defending himself and answering the charge.

XXXII. The accused party, if he has ground of exception against his judge, may appeal; for he who demands to be heard ought not to be refused.

XXXIII. The confession of those who are themselves under imputation, ought not to be received against others, unless they can clear themselves.

XLVII. What is blamed in a layman, ought much more to be condemned in a clerk.

* Harduin, vol. iii. p. 2070.

LIII. Ecclesiastical judges should be on their guard not to give sentence in the absence of those whose cause is tried, for the sentence will be null, and they will have to answer for it in the synod.

LXX. The judge is in more danger than he whose cause is judged, therefore every one should be on his guard, lest he decide any thing, or pronounce sentence unjustly.

The existence of principles so favourable to the accused, at a time when the rights of the weak were so insecurely guarded, contributed no doubt to the ascendancy which the spiritual courts at this time acquired. Their claim was admitted, not merely with a view of extending the Church's influence, but because under its shelter the helpless found their best safeguard. Nor yet can it be denied, that the time soon arrived when the spiritual power seemed for a season to swallow up the temporal, and the institutions of GOD'S natural providence were supposed to be only a branch of the institutions of His grace. This appears to have been the feeling of one of the most enlightened men of the ninth century, Hincmar, Archbishop of Rheims, when he says, that "*though the royal power is at present divided, yet there is one Church,* one royal priesthood, one holy nation; for the honour of which family, not only Bishops and Priests ought to contend, but Kings also in their palaces, and Counts in their cities."* The

* Hincmar, ii. 225, 227.

same acknowledgement was made by a contemporary sovereign, Charles the Bold, at a council held at Savonieres, in Lorraine, A. D. 859. After speaking of his consecration by the Archbishop, he asserts that in consequence he cannot be deposed "without being heard and judged by the Bishops, by whose ministry he was consecrated King, and who are called the thrones of GOD, in which GOD sits, and by whom He decrees His judgments, to whose paternal correction and judgment I was, and am, prepared to submit."*

This nearly reaches the full extent of those claims, which were afterwards advanced by the Popes at Avignon, and which turn upon the principle that whatever is spoken in Scripture of the delegation to men of divine power must needs pass through the Pope. "The Pope alone is called God's vicar."† And since it was declared of old of those who were the administrators of authority among men, "Ye are GOD's, and ye are all the children of the Most Highest," therefore it was no unnatural adscription to give this title to him in whom all this authority was concentrated. Hence the title of "Our Lord GOD the Pope," once found in the Canon law, though too revolting to men's better feelings to maintain its place there.‡

* Harduin, v. p. 488. † Giesceler's Kirchengeschichte, ii. p. 95, § 101.

‡ It has been disputed whether the word Deum occurred in the original manuscript of Zenzelinus. But it certainly occurred in the Lyons editions of 1584 and 1606, and in the Parisian editions of 1585, 1601, and 1612, (Gieseler's Lehrbuch der Kirchengeschichte, § 101) and the idea amounts to little more than is implied in other passages which Gieseler quotes.

But this encroachment of the spiritual upon the temporal sovereignty, by overstraining the authority of ecclesiastical courts, was the very circumstance which was fatal to their power.

The opposition began in England, at the very moment when these highest notions were prevalent among the doctors of the civil Law. Hence arose the statute of Provisors in the 38th year of King Edward III. A. D. 1363, which was in reality the dawning of those principles, afterwards so strikingly expressed in the statute of the 24th Henry VIII. for Restraint of Appeals. "This realm of England is an empire, governed by one supreme Lord and King, unto whom a body politic, composed of all sorts and degrees of people, divided in terms and by names of Spiritualty and Temporalty, been bound and owen to bear next to GOD, a natural and humble obedience.....the body spiritual whereof having power, when any cause of the law divine happened to come in question, or of spiritual learning, that it was declared interpreted and showed by that part of the said body politic called the Spiritualty, now being usually called the English Church."

There was here merely an assertion of the independent nature of the royal authority, and of the separate being of the English Church. But the Pope had set an example too likely to be followed. By claiming to be Christ's Vicar or Substitute, to be the source of all that power, which was exercised both by the civil and ecclesiastical judicature

according to the ordinance of GOD, he had asserted for himself a position wholly inconsistent with the original principles of the Church, and destructive of one of its greatest doctrines. The immediate supremacy of Christ, His continual presence with those Bishops, who occupy the seat of His Apostles, the constant reference to Him as the doer of all things in His Church—all this was incompatible with the idea of a deputed Head, as the common centre of unity to the whole Christian body. The bare fact that such a principle was never heard of in the Primitive Church, shows it to be inconsistent with Primitive opinions. True, the Pope's Headship might only be so far asserted as not to be inconsistent with the Headship of our Lord. But this, as the clergy of York in their remonstrance against his own claims, reminded Henry 8th, was like stating that a thing was possible, except in so far as it was impossible. Yet this principle, once adopted, was not easily forgotten. The temporal and spiritual power having been once united, were claimed in common by the King, as they had been by the Pope. When Henry maintained his claim, whether to the Clergy of York, or, as Atterbury renders more probable, to Bishop Tonstal, he rested on the argument that it was not more inconsistent with Christ's government of His Church to admit the King's superiority, than that of the Pope. "Hath not the Pope been called caput ecclesiæ, and who hath put any

addition to it? Have not men said, that the Pope may dispense cum jure divino?"*

In the same letter Henry follows in another respect the Pope's example, and as Scripture had been formerly so explained as to confine to spiritual persons all the power which GOD has entrusted to mankind, so did he claim it all for the civil authority. St Paul's command, when enforcing obedience to Church ordinances, "obey them which have the rule over you, and submit yourselves," he cites as applicable of course to temporal rulers.† And two years afterwards did he set forth that singular preface to the Latin Bible, (A. D. 1535) in which he made the very same pretension to Divine power upon earth, which had been so justly censured in the Roman Pontiff. In this he stated himself to be "in his kingdom like the soul in the body or the sun in the world, to exercise judgment in GOD'S place, to have *all jurisdiction* in his hands, ruling even over the Church as *GOD'S Vicegerent*, (vice Dei).....being in God's stead and bearing GOD'S image." (Dei vicem agentes, Deique habentes imaginem.)‡ All this is the exact counterpart of the Pope's usurpation, the civil in its turn swallowing up the religious authority. And in this feeling did king Henry order a medal to be struck, which was afterwards sold on the continent to buy bread for the Royal family, on which he set out his title to spiritual authority, "making an in-

* Wilkins's Concilia, iii. 765. † Wilkins, iii. 763.
‡ Hickes's Dignity of Ep. Or. ii. p. 78.

scription on it in letters of Greek, and Latin, and Hebrew, as Pilate did that over our Lord upon the Cross."* Thus too did he compel the Bishops to substitute his arms for those of their respective Sees, as a confession that their spiritual authority was deduced entirely from the fountain of the royal power.

Here then was an act exactly parallel to the Pope's aggression; a denial of the separate existence of the spiritual, as the other was of the separate being of civil empire. The reaction was nothing more than the natural consequences of papal usurpation. Our present object is with its effects upon ecclesiastical jurisdiction. That jurisdiction had been originally designed for the benefit of those, who were its objects. Its principal founder in this country had been instructed by Gregory the Great, that "even when he acted severely he must act in charity, and not in passion, with a view of saving the criminal from the pains of Hell. For when we correct the faithful, it is as good parents do their sons, whom while they chastise for their faults, they intend their heirs, and are preserving their possessions for the benefit of those, with whom they seem to be angry."† But the ecclesiastical courts, now given over to the royal authority, were no longer shaped according to their original design; they soon became as subservient to the defence of the temporal, as the Pope

* Hickes's Dignity of the Ep. Or. 2. 81. † Gregory, Ep. L. 12. § 31.

had made them to that of the spiritual supremacy. The object now was that the whole realm should be of the King's faith. And this course once adopted, was continued even when the title of Head* of the Church was abandoned, in accordance with those more temperate and scriptural views, which predominated at the final settlement of religion. The title of Head of the Church, as is well known, was abandoned by Queen Elizabeth, but the ecclesiastical Courts continued to be regarded too exclusively as a means of sustaining the royal authority. True it is that unity of faith is the great bond of states, and that no national institutions can be secure which do not stand upon a religious accordance, but the natural soundness of the soil itself, not the factitious accumulations of human force, supply the only safe and lasting foundation. The counsellors of Queen Elizabeth

* At Queen Elizabeth's accession, "Mr. Lever," says Sandys, in a letter to Archbishop Parker, "wisely put such a scruple into the Queen's head," [Burnet's History of the Reformation, 2. 2. § 457.] and instead therefore of the words of 35 Henry VIII. cap. 3. that the King is "of the Church of England, and also of Ireland, in earth supreme head," was substituted the declaration, 1 Elizabeth I. that "the Queen's highness is the only supreme governor of this realm.....as well in all spiritual and ecclesiastical things or causes as temporal."

The only unrepealed statute, (as far as the Author knows) in which the word "Head" occurs, is the Statute for Restraint of Appeals, (24 Henry VIII. § 12,) in which it is said, "that this realm of England is an empire governed by one supreme Head and King." But the word is here used in reference to the nation at large, and the objection therefore which had been made to the use of the title is avoided. The sovereign is in one sense head over the whole people, yet every family in the nation has its head, and so has that family of Christ's Church, in respect whereof He is styled "Head over all, blessed for ever."

thought otherwise. Their attention to the ecclesiastical courts was founded upon the alarming aspect of public affairs. "Things began," says Strype, "to look black and cloudy upon the realm. The Popish Princes abroad were entered into a secret league against the Queen:.....in Lancashire the gentlemen that came hitherto to Church, now withdrew on a sudden: a dangerous insurrection was peeping forth in the north of England. These matters begat deep thoughts at Court. In October the Queen entered into serious deliberation with her council concerning the state of her kingdom." The consequence is, a letter from the Lords of the Council to the Archbishop. "The Queen's Majesty of late in conference with us upon the state of this realm, among other things meet to be reformed, is moved to think that universally in the ecclesiastical government, the care and diligence that properly belongs to the office of Bishops, and other ecclesiastical Prelates and Pastors of this Church of England, is of late years so diminished and decayed as no small number of her subjects, partly for lack of diligent teaching and information, partly for lack of *correction* and reformation, are entered either into dangerous errors, or into a manner of life of contempt or liberty without use or exercise of any rites of the Church, openly forbearing to resort to their Parish Churches, where they ought to use common prayers, and to learn the will of GOD by hearing of Sermons, and consequently receive the Holy Sacraments.....And

though we find a concurrency of many causes, whereupon such general disorders and contempts have of late years grown and incurred,.....yet certainly we find no one cause hereof greater nor more manifest, than an universal oversight and negligence (for less we cannot term it) of the Bishops of the realm, who have not only peculiar possessions, to find, provide, and maintain officers, but have also jurisdictions over all inferior Ministers, Pastors and Curates, by them to inquire or to be informed of this manner of contempts and disorders, and by teaching and *correction* to reform them."....

"And therefore we will and require your Lordship in her Majesty's name, that.....you do circumspectly and as quietly as you may, without any manner of proceeding likely to breed public offence, inquire or cause to be inquired by such as are faithful officers, and not dissemblers, what persons they be, and of what quality, degree and name, that have not of late time resorted to their Parish Churches within their Diocese, or have not used the common prayers according to the laws of the realm, or have not at usual times received the Holy Sacrament; and how long they have forborne. And further we require you to be advertized what ecclesiastical public officers you have under your Lordship in your Diocese. Who they be with their names and degrees, ordained to see to the execution of the laws or orders of the Church."*

* Strype's Parker, iii. § 23. p. 560.

In consequence of this command the Archbishop empowered two Commissioners, together with the suffragan Bishop of Dover, "to examine, discuss, correct, and legally to punish, whatsoever crimes, excesses, faults, &c. were discovered either in the Laity or Clergy."* The same attempt on the part of other Bishops† was professedly referred by them to the necessity under which they were placed by the orders of the crown. So that during this reign ecclesiastical authority was clearly exercised as a means of binding together the different orders of the state for the security of the sovereign power. And for a time this object was in a great degree effected. Upon the enquiry made by the Archbishop on the occasion, which has been mentioned, it seems that the 11,174 families then resident in the Diocese of Canterbury furnished 32,986 communicants.‡ Indeed till towards the latter part of the reign of Queen Elizabeth, there was no actual Dissent from the Church of England, except on the part of some few Romanists. Even this had not commenced till the year 1570,§ from which time the existence of the Romish schism in this land is to be dated, while it is confessed by Neal‖

* Strype's Parker, ib. p. 562.

† Vid. the Bishop of Norwich's reason for enforcing discipline, "the matter toucheth me so near, as less than this I cannot do, if I will avoid extreme danger."—Strype's Annals, i. 27. p. 390.

‡ Strype's Parker, iii. 24. p. 564.

§ Vide Palmer's Treatise on the Church, part ii. cap. 2.

‖ "The chief design of these conclusions," i. e. those agreed to by the Puritan Ministers at their association, "was to introduce a reformation into the Church, without a separation....They ordained no Ministers, &c." —Neal's Hist. of the Puritans, vol. 1. c. vi.

that the Puritan party pretended as yet to no distinct ministry, and therefore of course to no separate communion. As yet then the Queen's effort to confirm her throne by the religious unity of her subjects was successful. And the same purpose was avowed by her successors. At the Hampton conference King James "was somewhat stirred, thinking that they aimed at a Scottish Presbytery, which, saith he, as well agreeth with a Monarchy as GOD and the Devil." And after hearing the Puritans, "if this be all, quoth he, that they have to say, I shall make them conform themselves, or I will harry them out of this land, or else do worse."*

As we have now reached the time when the power of Ecclesiastical Courts was about to be curtailed, it will be well in a few words to retrace our steps. They arose out of the spiritual authority by which the ministers of GOD'S word were empowered to receive men, or to separate them from the communion of the Church. To this, which the Bishops and Clergy possessed of right, was added the influence which they acquired when so frequently appealed to as arbiters. Amidst the distracted state of the sinking empire, its rulers were glad to give legal sanction to so salutary an influence. The same influence grew into authority amidst the novel institutions of the barbarian states. It was next employed as a means for cementing that usurpation by which the Popes

* 2nd Day's Conference, Phenix, 1. 170.

amassed for a season the whole authority of the world. It was finally seized upon as an engine by the civil power, and used in its turn for the confirmation of the temporal ascendancy.

This was its condition when the rising spirit of the Saxon race asserted the rights of the subject against the Stuart family. No portion of the national institutions was then more rudely or more reasonably assaulted. For that which had been designed for the religious benefit of individual Christians, had been perverted into a mere pillar of government. The rights of conscience were mercilessly infringed, not even under the pretence of zeal, but as mere matter of policy. What by origin was divine, was by use grown into a part of kingcraft. It is not to be denied indeed that when this power fell into worthy hands, it was often put to a wholesome purpose. No doubt there was much that was right in principle and salutary in tendency in the discipline of the age. And of this the sermons of some eminent prelates,* in reference

* See in particular the Sermons preached by Arthur Lake, Bishop of Wells, in the Cathedral and other Churches of that city, on occasions when public penance was performed. From the Preface to the Sermons of this prelate, (London, 1629) we learn that while Warden of New College and Vice-Chancellor of the University of Oxford, "he revived much of the ancient discipline there, and wrought a sensible reformation upon the more distempered parts of the University;" and his conduct in his Diocese is thus described.

"In the exercise of the Discipline of the Church, he carried himself so, that by his own practice he wrought a great reverence thereof, even in those who were otherwise not well affected thereunto. For when any enormous offender was censured in his Consistory, whose punishment and penance was fit should be performed in the Cathedral Church, as in-

to the performance of public penance, are a sufficient indication. But the religious effect which might have attended these measures, was marred by political associations. "To be really a member of the Church of England, the communicating in that Church, and complying with the external worship was not sufficient; the King's authority was also to be acknowledged as extensive as his flatterers were pleased to make it. So there were two sorts of Puritans, Church Puritans and State Puritans. But the High Commission affected to confound them one with another, in order to exercise authority over both."* Now it is in human nature to resist any forcible interference with private will. Their actions, men know, are liable to constraint in the intercourse of society, but the tide of their thoughts it is impossible to restrain. To interfere therefore by outward coercion between man and his Maker, to attempt by persecution to dam up the stream of opinion, is at any time a hopeless effort. But when this was done in a mere design of serving the state, when free-born minds

cestuous persons, notorious adulterers, notorious schismatics, or the like; himself was usually the preacher at such times: and this he did often, and upon divers occasions: and in such his sermons, (sundry of which thou shalt find in this work) did so open the grievousness of those offences, and the authority of the censures and discipline of the Church, as for the most part wrought great contrition in the parties punished; and after sermon before the whole congregation himself gave them absolution. All which he performed with that gravity, learning, and power, as gave great comfort to all, and bred, no doubt, a general reverence and awe of the censures and authority of the Church."

* Rapin's History of England, v. 2. Book 18.

were to be restrained in order that the governing party might be at one with its subjects, no wonder that our independent ancestors were provoked by so intolerable a wrong.

They opposed the Ecclesiastical Courts therefore because they had grown into a human institution, being designed, 1st, to reduce all men to the same opinions with the governing party, and 2ndly, being backed by temporal penalties. The gradual success of their efforts may soon be stated. The first decided diminution of ecclesiastical jurisdiction was the destruction of the High Commission Court in the first year of the Long Parliament. Though this did not diminish the legal enforcements of Church Discipline, yet the power by which they were carried into effect was destroyed. An attempt to revive this Court by James II., was again declared illegal by an Act of the 1st year of William and Mary.

The next great step was the prohibition of what was termed the oath ex officio. The previous usage of the Ecclesiastical Courts is thus described by Bishop Gibson. "Heretofore, when any person was presented upon a *vehement suspicion* (as for keeping company with this or that person, resorting to this or that place, or the like,) and yet no vicious practice could be directly proved, the regular way was for the Judge to cite the party, and charge him with the matter of the presentment. If he insisted on his innocence, (as in such cases they generally did,) then he had *purgation* en-

joined, i. e. he had a day appointed, to appear again with six or eight of his neighbours, of good fame and honest conversation, stated in that capacity compurgators : at which appearance, he was first to purge himself by making oath of his innocency, and then his neighbours were to purge him, by taking each a separate oath of their belief that what he had sworn was true.

" If the party presented did make due and regular purgation, in the manner aforesaid, then he was dismissed by the Judge with an admonition to abstain from keeping company with the person, or resorting to the place, or from whatever else was the *foundation* of the fame, whereby he had given offence and scandal to his neighbours. But if he failed in his purgation, (i. e. if he either would not make oath of his innocence, or could not find the number enjoined to swear their belief of his innocency) then he was ipso facto taken for guilty, and accordingly had penance enjoined, proportionable to the degree of guilt.

" Purgations of this kind, and the failure of purgation, appear on our ecclesiastical records without number : and the discipline was certainly fair and reasonable ; inasmuch as that person must be owned to be *ripe* for the censures of the Church, who in a whole parish cannot find so small a number to declare their belief of his innocence ; nor, which is yet more, to declare (after he has taken an oath in the most solemn manner) that they believe that what he has sworn is true.

"But it was a discipline too wholesome to be digested; and therefore in the 13th year of King Charles II., we find an express Act of Parliament, by which it was provided, that no Spiritual Judge should thenceforth tender any oath, by which the party should be compelled to purge him or herself, of any criminal matter or thing, whereby he or she might be liable to censure and punishment."*

Whatever may be the justice of Bishop Gibson's opinion, it cannot be denied that the proceeding "ex officio" is contrary to a principle of English law, since it is a mode of compelling a man to accuse himself. And however justifiable and expedient this may be where no worldly interests are involved, the case was different when spiritual sentences were backed by temporal penalties. This process therefore had long been matter of especial complaint. Even in the reign of Queen Elizabeth, Cartwright had been advised, that "such an oath was contrary to the laws of the land, and an inquisition tyrannical."† And a treatise was even then written against its legality.‡ It formed afterwards the last and weightiest article in the complaint presented by the city of London to the Long Parliament against the "government of Archbishops and Bishops."§ And as the Rebellion had been in great measure an opposition to that religious oppression which had been exercised through ecclesiastical functionaries

* Gibson's Codex, 2. 965.

† Strype's Whitgift, iv. § 2, p. 28. ‡ Id. p. 30.

§ Rushworth's Coll. part iii. vol. i. p. 96.

by the civil power, the prohibition of this mode of inquiry in the year after the King's return was as decided a completion of its victory, as any of those political advantages which it entailed. Nor have the clergy any reason to regret the abrogation of a system, which, however justifiable in itself, had yet been so employed as to make religion odious for the purpose of securing the unity of the state. The same may be said in reference to the next great step in the like direction, the Toleration Act, which was the immediate consequence of the Revolution. Its effect is shortly stated in the clause that no person who takes the oaths to government "shall be prosecuted in any ecclesiastical court for or by reason of their non-conforming to the Church of England." This might seem at first to exempt Dissenters from all submission to ecclesiastical courts. Its extent however was not so widely construed. They are still, writes Johnson, in the commencement of the last century, "under the lash of very many of the canons and ecclesiastical laws: I will mention two branches of them, viz., those concerning administrators and executors, and those against uncleanness of all sorts."* Yet he gives it as his opinion, that "to speak freely, no wise man has any reason to hope that Church Discipline can be restored in such an age as this."† And he assigns the true reason, that though the ecclesiastical laws were still in force, there was no administrative principle which secured their en-

* Preface to Clergyman's Vade Mecum, vol. 2. p. xxviii. † Id. 1. 301.

forcement except against the poor and undefended. "One is too rich to be prosecuted, and no officer dare meddle with him; another is too poor, and if he be prosecuted he will run away, and leave his family to the parish; and if a wealthy man be presented, he gets the information withdrawn by feeing some officer; if a poor man, then no ecclesiastical officer will prosecute him, because he can get nothing by it; and the churchwardens or parish will not be at twenty shillings charge to bring an offender to penance."

In this manner accordingly did ecclesiastical discipline smoulder on during the last century. It was never enforced against greater offenders, because churchwardens were unwilling to prosecute criminals at their own cost, and to no public fund could they have recourse. On the other hand, since the oath "ex officio" was forbidden, the Ecclesiastical Courts had no means of discovering offences where there were no accusers. Courts of correction however still continued to be held by the Official of every Archdeacon, and due records were regularly preserved. In the Archdeaconry of the East Riding, as appears from documents still in existence, the officers of every parish were sworn into office about the month of July, at the Archdeacon's Visitation, while about the month of November was held what was called "the correction" for the year. Its full title is as follows.

Dei Martis, duodecimo die mensis Octobris, Anno Domini Millesimo septingentesimo vicesimo quinto,

in ecclesia parochiali Santæ Mariæ in Beverley Archidiaconatus East Riding intra horas nonam et undecimam ante meridiem, ejusdam diei, coram venerabili viro Johanno Audley, legum doctori, officiali venerabilis viri, Heneagii Dering, legum etiam doctoris, Archidiaconi Archidiaconatus East Riding, inque presentia mei Thomæ Jubb Notarii publici, Registrarii—

Quibus die, horis, et loco, præconizatis omnibus et singulis quorum nomina et cognomina infra scribuntur degentibus intra Decanatus de Harthill, Holderness, Buckrose, et Dickering ad comparandum istis die, horis, et loco, debite citatis, prout apparet ex diversis certificatoriis in facie vel in dorso quarundam citationum ab hac curia emanatarum et relatarum, Dominus Judex antedictus pronunciavit omnes et singulos citatos, præconizatos, et nullo modo comparentes neque moras suas purgantes contumaces, et eorum quemlibet contumacem, ac in pænam contumaciarum suarum eorum quemlibet contumacem pronunciavit, et in scriptis excommunicari decrevit.

In the court held according to this notice, A. D. 1725, it appears by the records that seventy-one cases of immorality were punished either by pecuniary mulct, or by the infliction of public penance. In some cases the parties are described as of the middle class, yet the great mass of criminals appears to have been from among the poor. Many letters are preserved from the clergy of parishes, whence presentations had been made, stating what-

ever can be said in extenuation of guilt, while in one instance, which seems to have been a case of peculiar profligacy, the following sentence occurs in a letter from the Vicar of the Parish; "In order to stop the growing evil, the proper officers and I have agreed to be at the charge of a penance, which we desire may be a severe one, and issued out with all the speed which such an affair will admit of."

Processes of this nature were carried on through the greater part of the last century, and must have operated as some check on that undissembled profligacy which has since overspread the land. They afforded a means also of correcting that opinion, at present unhappily too prevalent among the poor, that marriage is an excuse for previous immorality. Cases of this last kind were continually presented and punished. So that this jurisdiction constituted that species of restraint, which Bishop Burnet recommended to the especial attention of the clergy, many of whom, he complains, "consider our function as a method of living, by performing divine offices, and making sermons, rather than as a watching over the souls of the flocks committed to us, visiting the sick, reproving scandalous persons, reconciling differences, and *being strict at least in governing the poor, whose necessities will oblige them to submit to any good rule we shall set them* for the better conduct of their lives. In these things does the pastoral care chiefly consist."*

* Hist. of the Ref. ii. 19.

There is something however at which the fairness of Englishmen revolts in laws which have one aspect for the rich and another for the poor. This feeling probably prompted the extraordinary acrimony with which the Ecclesiastical Courts were assailed in the House of Commons, when their power of restraining immorality was finally destroyed, A. D. 1788. In the absence of any provision for the conviction of an offender, the birth of an illegitimate child had been the common circumstance which had superseded the necessity of further proof. The act* of 1788, which forbade prosecution for incontinence in the Spiritual Courts, except within eight months of the crime, precluded this mode of establishing the offence. From this period therefore the parties arraigned were able to defend themselves by the limitation of time; a limitation introduced with an equally questionable effect into the recent Clergy Discipline Bill.† The effect of this Act within the district before referred to is the more observable, because the last clergyman who attempted to put the law in force, was a person whose learning and piety will not readily be forgotten. The circumstances also may lead to the conjecture, that it was from experiencing this failure of the Church's authorized power, that per-

* 27th George III. c. 44.

† Some limitation of time may in this case be expedient; but in many instances, the proofs of guilt do not come out for some time after the offence has been committed; and since all the old modes of proof are prohibited, the limitation to crimes committed within two years, seems to afford too great opportunities of escape to the guilty.

sons of more ardent zeal than the generality, had recourse to independent attempts. Joseph Milner, who held the small living of Ferriby, near Hull, worth at the time under £30. a year,* had looked so closely into the practice of the primitive age, as to form some due estimate of its "zeal against viciousness of practice." "Suppose it be allowed," he says, "that this zeal was carried to too great a length, and even that it was mixed with superstition; yet—in comparison of the licentiousness of our times—how beautiful does it appear, and how demonstrative of the power and reality of godliness among them."† With these feelings, he would of course endeavour to correct any instances of immorality in his own parish, and two presentations against parties for immorality were made from North Ferriby in the year 1792. The new Act seems to have been slow in finding its way into this district, and several penances had been imposed during the years immediately preceding, though the last Court at which much had been effected was in 1787, when about twenty-two cases of immorality were presented and punished. But by the year 1792 the Act of Parliament was well known. The Records of the Court of Correction for the Archdeaconry of the East Riding contain therefore the following entry. "Fryer appeared for —— and alleged he was not presented in due time allowed by law; whereupon, at Fryer's peti-

* Life of Joseph Milner, by his Brother, the Dean of Carlisle.

† Eccles. Hist. cap. xx.

tion, the Surrogate decreed him to be dismissed and referred to law."

And with this attempt all similar proceedings appear to have ended; the entry in the books for the next year being, "No Correction Court this year." Neither have such proceedings been ever resumed: the only Court that has since been held being that for the admission of churchwardens.

We have now therefore traced the decay of the spiritual power of the Ecclesiastical Courts, as we formerly witnessed its aggrandizement. That these Courts have still retained jurisdiction in cases of wills and marriages, is only an accidental circumstance concomitant upon their true office. This is but a portion of that influence, which they gained by the voluntary concession of individuals, or the grants of princes, and is but slightly connected with that power of separation from communion, which is their real authority. Such separation it is their inalienable duty to inflict as a punishment for sin. From this office they cannot shrink, without being wanting both in charity to individuals, and in loyalty to the Church. And yet how completely this duty is neglected, appears from a comparison between the correctional processes of the present time, and those of a corresponding period during the last century. In one year it has been seen that seventy-one such sentences were pronounced in one Archdeaconry of the Diocese of York; in the three years, 1827, 1828, and 1829, out of the list of causes supplied

to the Commissioners for Ecclesiastical Courts, appointed by King William IV., but one such process is noticed in the whole Diocese.*

It may seem strange to look upon this circumstance as affording ground for hope that ecclesiastical discipline can ever be revived. But the total destruction of former institutions is sometimes the best preparation for new ones, just as the mouldering stalks and withered leaves of Autumn are the aliment for the blossoms of Spring. And if the real evil which destroyed the spiritual courts was that temporal power was engrafted upon them, if a free people will not submit to the *enforcement* of religious duties, then nothing but the total annihilation of the spiritual laws of the State can render those of the Church tolerable. To a Christian mind indeed it is shocking, that while the smallest infringement of social rights is invariably observed and unrelentingly punished, the most open offences against Almighty GOD should be deemed no derangement of the laws of human society. And considering how surely vice leads to misery, and that habitual immorality saps the foundations of social security, there seems a want of wisdom in that people, which can suffer lust and excess to be indulged without restraint or animadversion. But this is part of that general system of affairs which it were as idle to lament, as it is impossible to obviate. "They will not be learned nor understand, but walk on still in darkness; all the foundations

* P. 423.

of the earth are out of course." We have to deal with the people of England, as we find them in the nineteenth century.

Looking then to the real impediment which for years has obstructed the exercise of Church Discipline, it is an obvious ground of hope that this impediment has been recently diminished, and will soon be totally removed. It is only during the present century that any progress has been made towards this result. The Acts of Parliament by which Church Discipline had previously been curtailed, whatever benefit they may have conferred on civil liberty, had not abated the evils of ecclesiastical jurisdiction. Certain persons and causes had been exempted from its operation, but its primary evil, the prostitution of spiritual sentences to worldly ends, was uncorrected. Excommunication was still followed by various civil disabilities, whether it was pronounced as a definitive sentence, or was merely the means of enforcing the Court's authority in those matrimonial and testamentary cases, with which it was mainly conversant. Those who had legislated on the subject in modern times had aimed only at excluding this power, as a noxious principle, from certain favoured limits, and had never thought of converting its efficacy into a salutary principle for the public good. They had followed the example of William the Norman, who attempted no alteration in the nature of excommunication, but demanded only that none of his servants, however enormous their crimes, should be subjected to its stroke.

The first change for the better was the Act of 1813. By its operation the punishment of excommunication* ceased to be the ordinary weapon of the Ecclesiastical Courts, and such a substitute was devised as the wisdom of Bacon† had early proposed, and the united assembly of the clergy‡ had subsequently solicited. Even when excommunication was pronounced as a definitive sentence, it was no longer attended by any civil disabilities, though the Court might follow it by a certain measure of imprisonment not exceeding six months.

This was obviously a progress in the right direction. Instead of exempting certain persons from Church censures, it was to exempt Church censures from perversion. They were freed in great measure from that temporal machinery, which, however it may in past times have contributed to their strength, had long ceased to be other than an impediment. The only record of the past was the power of imprisonment. And this it is proposed to remove by the Act now before Parliament, which provides that for the future "no person shall be liable to any civil penalty by means of any spiritual censures."

* "Instead" of excommunication, "the Judge before whom the contempt is committed, shall pronounce such person contumacious, and signify the same within ten days to His Majesty in Chancery.....the officers of Chancery shall thereupon issue a writ de contumace capiendo, &c."—Burn's Eccl. Law, Art. Excommunication.

† Of the Pacification of the Church.

‡ Vide Gibson's Codex, 2. 1059.

This provision, coupled with the repeal of the Test and Corporation Act, will take away all pretence that the Church is a party to any coercion for the enforcement of spiritual obligations, or that she is backed by the power of the State, when she separates unholy persons from her communion. The civil rights of the subject will henceforth be open to all. No exclusive possession of them by members of the Church will afford an undue incentive to desire to be reckoned among her sons. There will be no sacramental test, to lead men to communicate unworthily. The grounds therefore which have made the exercise of discipline so obnoxious will be removed. The last temporal penalty which attached to excommunication will be done away, or, in other words, its connexion with the civil sentence which has borne the same name will be finally dissevered.

All this is as it should be. One thing only is requisite for the Church's interest, that the nature of this change should be clearly understood, and its consequences adequately appreciated. The sole hope of inducing the people of England to relish such spiritual discipline as is adapted to the present times, is by showing them its total dissociation from that system which, whatever may have been the case in past days, is neither expedient nor attainable in the nineteenth century. The spiritual sword is now to be resigned by the State, because unsuited to its purposes. It is not found to answer in such hands either for the prevention of

vice or the preservation of tranquillity. What is desired then is, that it may be fairly and formally laid aside; that henceforth it may be clearly understood that the Church is to fight her own battles. We are content that so far as this particular goes she should cease to be *established.* The notion of an Establishment does not depend on the existence of endowments—these are possessed already by various sects among us—nor yet on protection, which all parties receive. That the sovereign must be of the Church of England is a more genuine part of it, as well as that its Bishops, as Lords spiritual, are one estate of the realm, and that its fabrics have a legal claim to maintenance. To these three points a fourth has hitherto been added, that its Spiritual Courts have possessed authority (at least in name) to punish all cases of immorality. This power the Church is not unwilling to see abolished, but it should be abolished plainly and formally. The dead stump of authority should not be left in the ground to preclude the healthier up-growth of the soil. The spiritual Court and spiritual sentence, as at present administered, have become so odious by the ingrafted influence of the worldly authority, that no remedy remains save their total annihilation. Let those things then be formally separated which it were better perhaps never to have united. Let spiritual decrees be backed by no temporal results. Let testamentary and matrimonial cases be committed, as the present Act of Parliament proposes, to

courts held in the Queen's name, under her commission, and by her authority. The Royal Commissioners have declared that "in administering testamentary law, the Ecclesiastical Court exercises a jurisdiction purely civil, and in name only ecclesiastical."* As a question of principle, therefore, no reason can be adduced why a "jurisdiction" which is "purely civil," should not be exercised as a mere civil trust. In what places this jurisdiction shall be exercised, and in whom shall be the patronage of its administrators, are questions to be decided by the ordinary rules of convenience and justice. All that the Church has to desire, is that this worldly jurisdiction may not continue to overlay that spiritual authority, which had its origin from another source, and is directed to another purpose. For let none suppose that Spiritual Courts and Spiritual Authority will be annihilated by any change in temporal law, or that the legislature can do ought but free them from their worldly encumbrances. There is a power behind, which however long it may have been detained as a blinded bondsman in the mill of this world's domination, will one day reassert its proper office and inherent strength. Its enemies may fancy that they are stripping it of the gilded trappings essential to its dignity, but they will find that they are only removing those shackles, which concealed the fair dimensions of the ordinance of GOD.

* Report, p. 25.

CHAPTER III.

The present Nature of Ecclesiastical Courts, and subjects of their jurisdiction.

THE causes which have proved fatal to the existing system of Church Discipline have been now detailed. Its gradual overthrow has been shown to be the natural result of the uses to which it was perverted. The bulwarks which had been raised for its safety or embellishment during an age of absolute power, have been shown to be altogether inconsistent with its preservation amidst the turbulent currents of modern opinion. But before we inquire whether there exists any principle of reconstruction, and if so, with what safeguards and limitations it must be accompanied, it will be necessary to explain somewhat more particularly what was the framework of that past system which, in *practice*, has been already abandoned; what the Church has lost, and what she is called upon therefore in some other manner to supply. The existing Church Courts, their office, and how far they either do or might perform it, shall be the subject of this chapter.

Ecclesiastical Courts may be said in general to have been of three kinds.

1. The Courts of Archbishops, for their provinces, which were especially *Courts of Appeal.* (The further reference to the Sovereign's authority, as well as the cases of peculiar jurisdiction, need not here be mentioned.)

2. The Courts of Bishops, for their Dioceses, in which all ordinary business was transacted.

3. The Courts of Archdeacons, to which appertained certain portions of this ordinary business, with an Appeal however to the Court of the Bishop.

As this was the general arrangement of Ecclesiastical Courts, so may the subjects which came before them be divided into three classes. This division is supplied by the Royal Commissioners. "The Ecclesiastical Jurisdiction," they say, "comprehends causes of a civil and temporal nature: some partaking both of a civil and spiritual character: and lastly, some purely spiritual.

"In the first class are testamentary causes, matrimonial causes for separation and for nullity of marriage, which are purely questions of *civil* right, between individuals in their lay character, and are neither spiritual, nor affecting the Church establishment.

"The second class comprises causes of a *mixed* description, as suits for tithes, church rates, seats and faculties.

"The third class includes Church Discipline,

and the correction of offences of a *spiritual* kind."*

Of these three classes of subjects the third, which is most properly called spiritual superintendence, belonged chiefly to the lowest of those three sets of courts, which have previously been mentioned. This appears to have been the case in the larger part of western Europe. "In the German countries," says Professor Walter, "the determination of such questions fell principally into the hands of the Archdeacons."† What especially contributed to this result during the last century was the absence of any authorized prosecutor, who could substantiate charges against those who had the means of contesting them, and who could afford to sustain them on appeal before a higher tribunal. The majority therefore of corrective sentences was against the poor, who, when they knew themselves in fault, would not risk the expense of opposition.

Besides this portion of its business, the Archdeacon's Court had a part of that mixed jurisdiction to which the Commissioners refer; its object being the due exercise of the powers of visitation. With this view, a Court was annually held, for the admission of Churchwardens to office; and since the gradual abrogation of corrective discipline over the laity, it is for this purpose that the Official, Registrar, and Apparitor of the Archdeacon, have been principally needed.

* Report, p. 12. † Lehrbuch des Kirchenrechts, § 180.

The other two sets of Courts have been chiefly occupied with such questions as are termed by the Commissioners either mixed or purely civil, and of these the last class has greatly preponderated. For this class of subjects has been pushed forward by the pressure of private interests, and amidst the increasing wealth and activity of the country there has been no want of persons to prosecute such claims. Where there has been one case of a spiritual or even of a mixed kind, there have been a hundred in which some matter of private right has been disputed. And since every court takes its colour from its predominant occupations, since these occupy the attention of its advocates, and stamp its character with the public, therefore have all the proceedings of the Ecclesiastical Court been made subservient to its more usual and more lucrative processes, and the very notion of its spiritual functions have been lost in the exercise of its civil powers.

This tendency was complained of by Bishop Gibson, then Archdeacon of Surrey, above a century ago. "The truth is," he says, "as to the prosecution of crimes presented; our Ecclesiastical Courts are so much taken up with matters of a civil nature, and such as concern temporal property, that spiritual matters, and those which concern the order and government of the Church are always in danger to be overlooked and lost in the crowd. Or if they happen to be regarded and punished with spiritual censures, yet the same cen-

sures being so commonly inflicted in cases of temporal profit, and those oftentimes very trivial, have by such mean applications, and such frequent and unsolemn use, lost their force and authority in spiritual matters. It cannot be expected that a separation from the communion of the Church should affect the minds of sinners with any degree of terror and remorse, when they see persons of the most unblameable lives put into the very same state, by the very same hands, upon occasions merely civil and secular, in causes which wholly terminate in temporal profit, and have not the least reference to religion and the souls of men."*

The evil which Bishop Gibson lamented has since increased an hundred fold. Nor can it be corrected till it be clearly understood that the civil rights, which depend upon marriage or inheritance, are utterly dissociated from any spiritual sentences. In this respect nothing can be more eligible than the arrangement, which is suggested by the Act now in progress, that testamentary and matrimonial cases shall be referred to a Court to be held in her Majesty's name, and that this Court "shall not pronounce any spiritual sentence whatsoever."

To this however it may be objected, that questions which depend on the validity of marriage connect themselves of necessity with religious obligation, and that their decision has always been referred to the opinion of the Church. This has not

* Preface to Gibson's Charges, p. viii.

been the judgment of one time or one country. The German reformers declared in one of their best considered formularies, that "the Ecclesiastical Court has very properly questions of marriage committed to it. For questions often occur, in which the consciences of parties require to be regarded, of which civil courts take small account."*

The reason here adduced amply justifies the practice of the middle ages, by which the decision of such cases was left to the Courts of the Church. But the argument has ceased to be applicable in modern days. Its inapplicability is at once manifested by the present inappropriateness of those principles, which were laid down as a primary law by the profound and eloquent Hooker. "Seeing there is not any man of the Church of England," says Hooker, "but the same man is also a member of the commonwealth; nor any man a member of the commonwealth, who is not also of the Church of England.....no person appertaining to the one can be denied to be of the other."† On this ground he rests his position that to define of our own Church's regimen, the Parliament of England hath competent authority."‡ For he adduces it as "most consonant with equity and reason that no ecclesiastical laws be made in a Christian commonwealth, without consent of the laity as of the clergy,"§ and this consent of the laity he supposed to be conveyed by the voice of Parliament.

* Seckendorf, iii. 31. § 119. p. 534.

† Eccl. Pol. viii. 1. § 2. ‡ Id. viii. 6. § 11. § Id. viii. 6. § 8.

This manner of speaking of "the Parliament together with the Convocation annexed thereunto,"* as though the one could not consist of or refer to persons, with whom the other was not concerned, was natural at a time when the *oneliness* of the Church (as it is well called by Archdeacon Manning†) had not yet been disputed, and when the opinion that men might belong to Christ's fold without that sacramental union, which he had himself appointed as the means of admission, had not yet been excogitated. For in Hooker's time no person supposed that Christ's Church could in any place be other than one, or that unchristened men could be Christians. Now till these hypotheses were invented, the adjudication of matrimonial cases might naturally be left to Church tribunals. For as yet no man was married who was not a Churchman. But the vast population of a different kind which has grown up around our institutions requires other treatment. Marriage is an institution which, though originally derived from Divine law, is yet capable of approving itself to natural conscience. It conduces undoubtedly to the happiness of individuals and the security of states. We may be thankful therefore that the civil power, though unable or unwilling to prevent many things which GOD'S law condemns, is yet disposed to sanction one ordinance which it has introduced. We may rejoice to find marriage practised not only among

* Eccl. Pol. viii. 6. § 11.
† On the Unity of the Church.

Mahometans, but among infidels and socialists. Its efficacy is no where better expressed than by the great infidel poet of antiquity ;

> Inde Casas postquam, ac Pelles, Ignemque pararunt,
> Et Mulier conjuncta Viro concessit in unum ;
> Castaque privatæ Veneris connubia læta
> Cognita sunt, Prolemque ex se videre creatam ;
> Tum genus humanum primum *mollescere* cæpit.

The State no doubt does wisely in encouraging what contributes so greatly to the amelioration of life. But such marriages continue to be heathen marriages still. The Church can know nothing save of the actions of Christians. With her, matrimony is an "holy estate, signifying the mystical union which is betwixt Christ and His Church." She knows no means of compacting it save in the name of GOD and by the declaration of His minister. Her sentence is, "those whom GOD hath joined together let no man put asunder."* However therefore she may admire the wisdom of those, who for civil purposes have transplanted this Christian institution into a Pagan soil, yet in such transfer she has no participation. Such associations merely for civil purposes, leave persons in her sight precisely in the same situation which they occupied before. Not a word occurs in her liturgy or formularies, which implies that any

* "The lawful conjunction of man and wife is not only GOD's *ordinance*, but GOD's *act* also : He doth it by Himself or His minister."—Bishop Lake's Sermons, p. 58.

registrar or other civil officer can give sanction to a religious obligation. Such a power cannot by any possibility be included in "that only prerogative" which belongs to temporal rulers "to rule all states and degrees committed to their charge by GOD, whether they be ecclesiastical or temporal, and restrain with the civil sword the stubborn and evil doers."* Were persons, who had been thus united while heathen, to solicit admission afterwards into the Christian fold, they would require indeed no fresh tie of marriage, because the sacred ordinance of Baptism would confer its consecrating virtue upon all the lawful relations of their existing life. Fathers, children, or husbands, as they were by nature, they would continue within the kingdom of Grace. But the case would be different if those who were already Christians should think of uniting themselves by a merely civil obligation. The Christian can be the subject of no heathen bond. His relations to all men must be Christian relations. Those who enter therefore merely into the civil estate of marriage, are not married in the eye of the Church. The laws of the land may do well to recognize the obligation of such alliances, and they may be valid for purposes of inheritance, but it is impossible that they can be recognized by any Church tribunal. Nor would any minister receive persons thus associated to the Lord's Table.

Here then is an obvious reason why under existing circumstances an ecclesiastical tribunal is the

* Art. 37.

very last to which the validity of marriages should be referred by the State. A spiritual tribunal could not ratify many alliances which the State holds valid, without stultifying itself. So that it must sacrifice the advantage of the community on the one side, or on the other the consistency of the Church. To refer testamentary and matrimonial cases therefore to a Court which shall act in the Queen's name, is a change most gladly to be accepted. It is to be hoped that this Court will be so completely divested of all ecclesiastical character as to make it manifest that its decisions do not commit the Church. The object of the State in its creation is merely the determination of the title to certain civil rights, and cannot affect men's claim to any spiritual advantages. The Church must have some other way of deciding who are and who "are not joined together by GOD," and by her own principles must she be guided in admitting men to her communion. For nothing would be worse than that the civil validity, which is given to heathen alliances, should sanction such connexion among Christians. The matrimonial court therefore ought in the most unequivocal manner to renounce all title to be called an ecclesiastical tribunal. To keep up the name, when all admixture of spiritual subjects has been carefully purged away, would be as preposterous as that the title and bearing of their ancient Abbots should be perpetuated in the present possessors of Woburn or of Tavistock. And while such a dissociation between

a tribunal which regulates a mere worldly right, and that which is conversant with the care of souls, would tend more than aught besides to clear away the popular misapprehensions which obstruct the exercise of Church Discipline, the very sanctity of the marriage obligation enforces the necessity of the separation, and makes it of tenfold importance that unchristian alliances should not be sanctioned by Courts Christian.

We come now to those mixed causes, of a character partly civil, and partly spiritual, which the Royal Commissioners state to be the second class of subjects subordinate to the jurisdiction of Ecclesiastical Courts. These may be said in general to concern the regulation of external worship; to include whatever contributes to render its outward aspect accordant with its inward intent. On this ground even suits for tithes have been included in this class, respecting which however nothing shall be said in this place. What is more to the purpose of these pages is the jurisdiction exercised over the fabric of the Church and its occupants, the power of ordering who shall minister, who shall be present, and in what places; as well as by what officers due order shall be maintained. All this has fallen within the province assigned by the laws of the land to Ecclesiastical Courts. It is well described in the Report as of a mixed nature, because while it arises out of sacred relations, it yet involves rights which can only be enforced by aid of the civil government. This circumstance distin-

guishes it from the question of admission to the Holy Communion, which the clergy have in their own hands, and which no civil judicature has either right or power to compel.

An instance was exhibited in early times by the well known case of Paul of Samosata. He attempted to hold his place as an officer of the Church, implying of course the right to officiate, and to admit his followers, and it was only by referring to the power of Aurelian that the rights of the Church could be vindicated for those to whom they truly appertained. Here we have the distinction between those spiritual rights, which are indefeasible—the assertion whereof needs no sanction from the temporal power—and those which can only be maintained when the temporal power is favourable. To separate men from their communion, to refuse them participation in the Holy Eucharist, was a thing which needed no appeal to the Emperor, and for which neither aid nor permission was ever invoked. But to recover possession of the Church and its appurtenances, to secure it, and what belonged to it, for Christian worshippers, this was a *mixed* case for which the help of the civil governor was required.

Had Aurelian been a persecutor of the Christians, and held their union to be unlawful, he would of course have refused to interfere for their protection. But being favourable to them, he backed the sentence which had been past by their private judicatures, and as the Bishop of Antioch refused to

submit to his brother primates of Rome and Alexandria, he decided that the Church property should belong to the party which was approved by the first of these authorities, and by the Bishops who formed his court.

Now the self-same concurrence which was yielded in one instance by this Roman Emperor, has been given in general by the founders of the British constitution; subject however to this condition, that the rules by which the constituted directors of the Church are to decide such matters shall not merely be the by-laws which the members of a voluntary association shall ratify by private compact, but the public decisions of the whole community. This is a consequence of that circumstance which has been expressed in the words already quoted from Hooker, that "there is not any man a member of the commonwealth, who is not also of the Church of England." And that such an assertion is no longer true, that there is no assembly which represents the exact body of lay-Churchmen as it was once represented by Parliament, is a strong argument for retaining the ancient rules and order except where circumstances necessitate an alteration.

So much the Church seems to have a right to demand, that she should have either the advantages of an establishment, or those, which pertain to a voluntary institution. Were she the latter only, like the various religious parties, which of late have arisen in this land, her rules on subjects of

internal regulation would at all events be allowed by the State to have the same binding power over her members, as is granted to the decisions of a yearly meeting of Quakers, or of a Methodist conference. This is the State's rule respecting all societies, which it does not hold to be illegal. Every bargain between individuals, if not contrary to the general principles of justice, is enforced by the State. Every private association is allowed to settle who shall attend or preside at its meetings. By this species of interpenetration the rules of every recognized society borrow cogency from the general laws of the community within which it exists.

Thus then would it be with the Church if its ancient fabric stood merely in the midst of modern society, without receiving from it recognition or support. But so long as the Church is established, as it loses on the one hand this right of self-adjustment, so can it claim on the other the maintenance of those general rules, for which this right is surrendered. There is a spiritual power which it cannot sacrifice; but its power of re-arranging such minor matters as are necessary for its existence as a society,—this it consents to leave in abeyance, because the national laws are so ordered that they supply its place. What it claims then is that these national laws shall as far as possible maintain their original course: since there are circumstances which obstruct the free ordering of new rules, it desires that the old may not be needlessly abandoned.

Any fundamental change might be fatal to the existence of its establishment, the primary principle whereof is, that public matters are so ordered as to accord with that ancient kingdom of Christ's Church, which the founders of our constitution found existing in the land.

For these reasons then it is greatly to be desired that the jurisdiction in mixed causes should continue in its old course. The ordering, that is, of external worship should be left where it was originally vested, in the Courts of Bishops, with appeal to their Metropolitans. One useful provision indeed was suggested by the Royal Commissioners, which appears not to have been overlooked in the Bill now before Parliament. It is a power of referring disputes respecting the right to seats in Churches to some new authority, expressly constituted to decide them. The idea has probably been suggested by the experiment tried in the Clergy Discipline Bill, which has shewn the advantage of some simpler mode of adjustment, free from the entanglement of such rules as long precedent has introduced. The old process in complaints against the Clergy was by presentment in the Court either of the Archdeacon or of the Bishop. The following are some examples of the former from the Registry of the Archidiaconal Court of the East Riding.

1725, Kirkby Underdale. Officium Domini contra Jacobum Warren, Clericum, Rectorem ibidem, for neglect of his duty in not celebrating Divine

Service on several Sundays and Holidays. In not visiting the sick, burying the dead, and administering public Baptism to the child of William Clarkson upon notice given.

1683, Walkington. Officium Domini contra Edwardum Barnard, Rectorem, ibidem, in non comparendo ad subeundam visitationem, for omitting to read Divine Service generally upon Holidays, and for not *declaring Holidays and Fasting* days after the reading of the Nicene Creed upon the Sundays before, and for not catechising the youth either Sundays or Holidays, and for not making a perambulation to view the bounds of the Parish upon any of the Rogation days this year, 1682, or any year since he was Rector there, saving once, as he has heard, and for suffering the Parsonage House and outhouses to be much out of repair, and ready to fall, and for suffering the garden to be much out of order and spoiled.

In lieu of this process, which has been involved in such difficulties as to become almost ineffectual, a simpler mode of proceeding by a special Commission has been substituted, and the adoption of the same expedient in other cases has been recommended. In proceedings against the Clergy however, the Bishops' Court must be finally appealed to, if no previous settlement can be attained, and in other cases also such a court of reference must at least exist.

Indeed there is one purpose, for which such an authority seems indispensable: the enforcement,

namely, of the power of Visitation. And the same may be said of the Court of the Archdeacon. From the report issued by the Royal Commissioners, the Archdeacon's Court might appear useless, because since Parliament has interfered with the punishment of moral offences, no correctional processes have been recorded there. But the Official and Registrar of the Archdeacon are necessary for the purpose of admitting to office the Churchwardens who appear at his Visitation, as well as with a view of making those inquiries, which direct him in the discharge of his duties. For this purpose they are paid by fees which are due at Visitation, and which are only a bare remuneration for their trouble and expenses. Without such officers it would be impossible for the Archdeacon to execute his office, touching as it does on many questions, which connect themselves as well with the civil as with the common law of the land.

The same may be said of the Bishop's Visitation, which in like manner is a Court, and could hardly be carried on, if the Bishop's power over such mixed questions, as arise out of the Church's existence as a public society, was withdrawn. Although therefore the detail of many processes, which are now carried on in an expensive and troublesome manner, might be advantageously simplified by special adjudication, though disputed questions respecting the right to seats, may be disposed of by the immediate interference of the

Bishop or his deputy, yet his Consistory Court cannot be dispensed with.

But there is one important point as respects this court, which must not be forgotten—the nature namely of the sanctions by which its authority should be enforced. They must be determined by reference to the purpose of the Court, and to the origin of its power. In exercising this mixed jurisdiction it proceeds upon a trust committed to it by the civil ruler, and with a view of adjusting those matters of internal arrangement which are necessary to the coherence of the Church as a recognized society. It resembles therefore the Committee of reference of any private Institution, except that bearing relation to an Established Church, it proceeds upon rules laid down for it by national enactment. Its decisions therefore ought not to be backed by spiritual deprivations, because it is acting on behalf of the civil power, nor should they be accompanied by any penalty, because the object of this mixed jurisdiction is merely the determination of rights, not the punishment of offenders. These reasons indicate the inexpediency of the system, by which the Spiritual Court was compelled to enforce every sentence by the threat of excommunication, as well as of that power of imprisonment as a *punishment*, which was substituted by the 53 Geo. 3rd. § 127. The first course may be illustrated (referring to the case already adduced) by supposing that Aurelian had told the Christians that he gave his imperial sanction to

the excommunication of Paul of Samosata. They would have replied, that this was already done, and that they were now asking for the maintenance of a civil right, not of a spiritual sentence. Nor would the case have been mended had he told them, which is the alternative provided by the 53 Geo. 3rd, that they might imprison Paul for six months. They would have answered that their object was not the punishment of Paul but their own vindication, that they only desired the enforcement of that decision, which their tribunal had already pronounced. And this is what the Bishops' Court should obtain in respect of this mixed jurisdiction from the civil ruler. Its sentences, passed in accordance with the laws of the land, should have the same validity in their proper subject matter with the decision of any private arbiter. They should state what the right is, together with what costs have been incurred in establishingit, and the ordinary modes of action should provide means of giving effect to what is decreed. It is satisfactory to see that this appears to be the intention of the measure at present before Parliament respecting the ecclesiastical jurisdiction in mixed causes.

We come now to the third of those classes of subjects, with which Courts Christian are conversant, Church Discipline, and the correction of offences of a *spiritual* kind. By Church Discipline is often understood Discipline over the Clergy; a mistake which involves the common

error that the Laity are not Churchmen, but that men *go into the Church*, as it is singularly expressed, at their ordination. Of this first part of corrective Discipline nothing need here be said, but that the Act, called the Clergy Discipline Bill, is an example of the benefit which has already arisen from the labours of the Royal Commissioners. What remains to be considered is that general corrective Discipline, which refers equally to all members of the Church. In former times it was principally exercised, as has been mentioned, by the Archdeacon's Court, though an appeal always lay to the Bishop. But the crimes punished were generally those of a notorious kind, which few found it to their advantage to dispute.

How then stands the law at present, and what may we either expect or desire? The complete desuetude of this part of Ecclesiastical Discipline has already been noticed, and that no crimes have in practice been punished during many years. There are cases indeed, in which it would still be possible to prosecute offenders—cases in which the party does not happen to be shielded by the usual exemptions, or rich enough to obstruct the course of justice. But the good effect of a law depends upon its being equal and certain. To this jurisdiction belongs neither one quality nor the other. Where one criminal could be punished, a hundred confessedly more guilty might defy prosecution. So that in the present state of legislation this corrective Discipline is worse than useless—without

being able to act, it obstructs the course of action. It is surely better not to threaten, where it is impossible to strike: not to brandish a weapon the edge whereof has been broken by Parliamentary exemptions.

On this account there seems much wisdom, so far as regards recent times, in the words of the Royal Commissioners: "it may be greatly doubted whether any beneficial effects have resulted from these proceedings, or at least so beneficial as to counterbalance the odium they have excited, and the oppression, which, in some few instances, has been exercised. We think that the cognizance of such offences (immorality) cannot be advantageously conferred on the Provincial Courts; and on the whole we are of opinion, that these prosecutions should be abolished."* So much at all events seems desirable, and after the Report of the Commissioners might be confidently expected, that the civil penalties which had heretofore rendered spiritual sentences so obnoxious should be altogether removed. This provision accordingly, as was noticed in the last chapter, forms part of the Bill now before Parliament. For in a free country laws can only have effect, when they are backed by the public sentiment, and it is manifest that the English nation is not disposed to allow the commandments of GOD a place in its statute book. Were the mass of our countrymen really persuaded

* Report, p. 64.

that no nation can be happy except it be virtuous, and that the Creator has so ordered society that it cannot prosper save in accordance with His will, it would be otherwise. But experience and revelation alike testify that this truth will never be practically received by the mass of mankind. So that we must be content to allow men to be their own enemies.

But then comes the question, is the Ecclesiastical Court to pronounce no sentence, because it can inflict no penalty? In magnis voluisse sat est. May not the Church at all events acquit herself of participation in the crimes which she cannot prevent? Is she to be compelled to acquiesce in that, which is set forth by Her Divine Head as so criminal in the Church of Pergamos: "I have a few things against thee, because thou hast them—that hold the doctrine of the Nicolaitans, which thing I hate." Nothing surely can be less just and reasonable than to prevent the Church from separating men by public sentence from her communion, because objection has been made to the civil penalties with which in other times the State chose to accompany her sentence.

It may certainly be demanded therefore as matter of right that the third branch of ecclesiastical jurisdiction—the corrective discipline, which is properly called spiritual authority—should remain, when its spiritual censures have been divested of their civil penalties. And accordingly the power of pronouncing sentences appears to be left pretty

much where it was by the Bill at present in progress. But the expediency of this course must depend on the two following circumstances.

1. Would these corrective sentences be so thoroughly detached from any civil process, as to make it manifest that they proceed only from spiritual authority? Unless this is carefully guarded, they would only fall again into the same contempt from which it is sought to revive them. This jurisdiction was exercised formerly by the Bishops' Court, because it was always accompanied by those civil penalties, which that Court was then accustomed to inflict. But when these civil penalties are abandoned, it is possible that the sentence may be more suitably pronounced in some other manner. At all events it were better that such corrective discipline should not be exercised, except by those who confine themselves to the administration of the Church's law. What solemnity, for example, would there be in the declaration of GOD'S curse, by the same judge, who might next moment be compelled to give sentence that marriage was valid without GOD'S blessing.*

* The Act of Parliament at present in progress does not make any other direct provision respecting the Vicars-General of Archbishops, and Chancellors of Bishops, than that the first shall be Doctors of Law of the age of thirty, the second Masters of Arts, or Bachelors of Civil Law, of the age of twenty-six. § 110.

It may be inferred however that it is supposed that the Vicar-General will commonly be taken from among the Advocates in her Majesty's Court of Arches. For the Archbishop's Court of Appeal, unless he acts in person, is to consist of three parties, "being or having been an Advocate in her Majesty's Court of Arches of ten years' standing at the least, or being

2. It must be considered whether the existing impediments to the exercise of Discipline can be done away. It were little to leave the Bishops' Court its power of issuing sentence of excommunication, unless those Acts of Parliament are repealed by which its range is at present limited. When the temporal penalties of excommunication are removed, the temporal restrictions to its exercises ought also to be abrogated. For while the Act 27 Geo. 3rd., § 44. is in force, any revival of Church Discipline by our present courts is impossible. Of this Act indeed the Royal Commissioners advise the repeal, and unless the advice be acted upon, it were wiser perhaps to adopt their other recommendation, and abandon the spiritual jurisdiction of the present Ecclesiastical Courts altogether. In leaving the matter in its existing state, the authors of the present Bill must be actuated by the hope that when all temporal penalties have been removed, Parliament will be induced to withdraw the restraints, which it has placed upon Church tribunals. Otherwise it were surely better not to expose this jurisdiction any longer a maimed, truncated, and helpless victim to the sport

or having been a Sergeant at Law or a Barrister at Law of fifteen years standing at the least." § 129. Now as the Vicar-General must, by the same clauses, be one of these three parties, he must possess one of these qualifications, and it is needless to say that the title of D. C. L. is most usually combined with the first.

The person so selected is not disqualified as it would seem from being Judge of the new Court of Arches, so that nothing is more likely than that the two jurisdictions should in practice be united.

and mockery of the enemies of Zion. Better were it to give decent interment to the carcase, than to leave it stranded at the mercy of every surge. For what is its present condition? Is not Ecclesiastical Discipline become a very by-word? Does not every offender insult as well as brave it?

> Jacet ingens littore truncus,
> Avolsumque humeris caput, et sine nomine corpus.

Surely it is desirable either to leave this jurisdiction unrestricted, or to pass an Act declaring that since spiritual censures have become obnoxious by reason of the temporal penalties, which were formerly connected with them, therefore all exercise of spiritual power by the present Ecclesiastical Courts shall henceforth be relinquished. Let them confine themselves to that mixed authority which they have by reason of their connexion with the State. Let them be Courts ecclesiastical, not spiritual. This would be a plain admission that the power of excommunication was not abolished, (this the State cannot do) but abandoned. That power which is really spiritual, that which regards the care of souls, must then find some mode of adapting itself to the new circumstances in which the Church would be placed. For though new, they would by no means be unexampled in her age-long warfare against the powers of darkness. She would only have gone through a great cycle of her history, and returned again to the same position whence she originally set forth. Her spiritual decrees

would be left by the State as the State found them in the days of Constantine. Their connexion only with the temporal judicature would be dissolved. Excommunication, as a civil sentence, would have an end. A final divorce would in this particular be pronounced between the worldly and the spiritual power—the laws of natural society and the decrees of the kingdom of Revelation would find again their separate course, each must fall back upon its original principles, and rest upon the primeval sanctions of its power.

CHAPTER IV.

Suggestions for the restoration of Church Courts.

THE causes which have involved the loss of Church Discipline were noticed in the second chapter—to suggest means which may lead to its revival is the object of this. Those causes were asserted to have been the prostitution of Church tribunals to secular purposes, and the enforcement of their decisions by the civil sword. The last of these must under existing circumstances be admitted to be as unwise, as the first was always indefensible. The result has been the almost total destruction of these ancient institutions as spiritual tribunals: and their jurisdiction is already so involved and hampered, that unless the civil power concedes to them some measure of their former freedom, they will probably be destroyed as useless before the expiration of many Sessions of Parliament.

But can any Act of the Legislature change the laws of GOD? Can it diminish the spiritual power with which the Bishops of Christ's Church are entrusted? True, it may take away that "which has been committed to them by the laws of this

realm," but it cannot affect the solemn promise, which in the sight of GOD and man they gave at their consecration, "to correct and punish such as be unjust, disobedient, and criminous within your Diocese, *according to such authority as you have by GOD's word.*" To regard this as implying that a power resides in the Episcopal order distinct from any thing which the laws of the land can confer or remove, is no theory of any modern school, since these words are described by our greatest canonist, Bishop Gibson, as a "plain recognition of the right, which the Bishops of the Church of England have to exercise discipline upon the foot of *divine*, as well as human authority." He speaks of their power therefore as having "a twofold original, from the word of GOD, and from the laws of the land."* This oath moreover, has no especial reference to their power over the clergy, for *all men* are stated in the preceding clause as its natural object. From this responsibility no civil power can free our Bishops; the oath has been taken to GOD, and at GOD's final judgment must it be required. "Blessed is that servant whom his Lord when he cometh shall find so doing."

Now the scriptural authority of Bishops, according to the Church of England, is manifestly that which their first predecessors enjoyed by the institution of the Apostles. So much may be gath-

* Gibson's Codex, 1. xvii.

ered, without trenching upon disputed questions, from the Preface to the Service which has just been cited. "It is manifest unto all men diligently reading *Holy Scripture* and ancient authors, that from the Apostles' time there have been these orders of ministers in Christ's Church; Bishops, Priests, and Deacons." Of the power of Bishops then in the earliest days, the most material part, (exclusive of the power of order) and that which involved whatever else was essential, has been already stated to be their right of allowing men or forbidding them the communion of the Church. This was properly speaking their *power*. This was what the Church could do before the days of Constantine.

To this then it is that we should go back. Where the civil power found the spiritual authorities in the days of Constantine, there ought it to leave them in the days of Victoria. This cannot be forfeited without compelling our Bishops to violate a solemn oath, which no human power has authority to cancel, and without a direct infraction of the laws of GOD, to which men in their sacred office will never submit. Let us see then what this obligation properly implies, and what impediments would interfere with its fulfilment.

And first it may be noted, that this power implies nothing in the shape of persecution. It is but the self-same which was possessed by the Christian Bishops under Decius or Trajan, and who shall speak of the martyrs, Cyprian or Igna-

tius, as the possessors rather than the victims of a persecuting power. Yet what was the cause of their martyrdom, but that they would not intercommunicate in things sacred with the more liberal rulers of the Roman world? The Romans would willingly have sacrificed to Christ, would they have invoked the genius of the Emperor. The exclusive spirit of Christianity has been truly described by the historian of the Empire as the cause of their unpopularity.

The same thing may be observed in the present day. The Bishops of our Church desire to exercise no power save over those who choose to obey them. It is every man's free choice whether by entering into holy orders he takes upon him that more full obedience which it involves. It is in the choice of parents, whether they shall bring their children to the baptismal font where they are pledged to that Church Catholic, in which Christ's ministers are officers. It is put to every man at confirmation, whether he will ratify this vow or no. Finally, every one may separate himself when he will from the Church's fellowship. What is there in all this which savours of persecution? How unreasonable would it be, that after willingly renouncing the system of our Church, slighting the office of our ministers, and despising their persons, men should yet desire to participate in those ordinances, which they have shown that they contemn! What a hardship would it be on those who value the Church's

ministrations, and think her rules of admission material, if they were compelled to violate their conscience, by receiving persons among them, who think that there is no matter of conscience in the case.

It is necessary to be more full on this subject, because there are those who clamour at their exclusion from the ordinances of the Church, not because of their own loss, but because of our gain. It is our belief that certain places, times, and actions, are productive of peculiar effect, being the distinctive marks of that especial brotherhood, which we suppose to have been instituted by Christ our Lord. To see these things carelessly interfered with by persons who do not sympathize with our views, is a profanation by which our feelings are offended. In this there is no exclusive spirit, for we invite all men to partake the benefits of our system; there is no intolerance, for we ask no one to partake them save by his own desire. But the exclusive spirit is with those, who preferring to remain strangers to this system themselves, would exclude us from its advantages; and what can be less tolerant than to seek by vulgar abuse or public process to drive us from peculiarities which we deem important.

The authority then which our Bishops possess is not of an intolerant or persecuting nature, it is the same which was exercised by the holy Ambrose or the Apostolic Ignatius—a rule over those who voluntarily submit themselves. How is this rule

to be exercised, and do any impediments obstruct its efficacy?

Its primary element is clear enough; the power which is possessed by every Parish Priest, as the deputy of his Bishop, to repel unworthy candidates from the Lord's Table. This is concisely expressed in the Rubric and more fully in the 26th and 27th Canons. These Canons, after stating that neither "notorious offenders," nor "schismatics," shall be admitted to the Lord's Table, add that in every such case, the Minister shall "upon complaint, or being required by the Ordinary, signify the cause thereof unto him, and therein obey his order and direction."

Thus is this important power retained as it ought to be in the hands of the Bishop, and it depends on him therefore how far this essential part of Church Discipline shall be exercised. Yet there is manifestly something more required, in order to give to this power its due effect. Before a Minister takes so strong a step as to repel any one from the Lord's table, he needs on every account to have some opportunity of laying the grounds of his censure before some competent tribunal. To throw so heavy a responsibility upon his individual judgment is neither just to himself nor to the party whom he censures. The person whom he excludes may fairly demand that before he is subjected to so heavy a stigma, some sentence should have been already pronounced.

Now for all this, what provision is at present made?

Again, though the 28th Canon orders that "Strangers" should not "come often and commonly from other parishes, lest perhaps they be admitted to the Lord's Table amongst others," yet no adequate provision exists which may prevent those who are separated from the Church's communion in one place from being received in another. For neither is there any Canon respecting those who move to a fresh residence, nor any form by which a Bishop may warn his Presbyters against the offender.

Here then we need a Bishops' Court to do that for which the Courts of Bishops were properly designed. Here is the spiritual authority which is their real and inalienable power. They cannot exercise it indeed through the existing Ecclesiastical Courts, because these have suffered such damage from the uses made of them by the secular power, that they are no longer available for religious purposes; but something there must be, which even if bearing a different name, may answer the same purpose.

One thing is clear—the work must unquestionably be committed to Ecclesiastics. This is not an office in which members of the legal profession can be advantageously employed. And this is a reason for putting clearly forward the distinction insisted on at the end of the last Chapter between Ecclesiastical Courts, to which the State commits such

power as is necessary for maintaining the Church as an Establishment, and Courts Spiritual, in which the Bishop decides respecting things divine. Those who, though called Ecclesiastical Judges, are yet chiefly conversant with such subjects as are only in name Ecclesiastical, or who at most regard only such mixed questions as respect the externals of religion, would address themselves to such a duty as this with habits and under feelings by no means favourable to its successful performance. It would be hard for them to remember that while in other cases they were acting by the State's authority, they were in this instance administering a power, which was inherent in the Church alone. Yet unless an obvious distinction be established between the Spiritual sentence of excommunication and those temporal decisions, which the State has authority to decree and enforce, there will be a danger lest the talent, respectability and experience to be found in those who decide respecting the externals of the Established system, coupled with their title of Ecclesiastical judges, should induce the opinion that they are fit persons to be intrusted with the Spiritual powers of the Church.

That this fear is not absolutely groundless is manifest from the provisions of the Act which Parliament is now considering, as well as from the whole course of Ecclesiastical jurisprudence in modern times. When Henry VIII. was acknowledged Head of the Church, nothing was further from men's thoughts, as the very Statute for Restraint of

Appeals implies, than that his decisions were to be pronounced altogether by laymen. The King being, according to the maxims of English law, mixta persona,* possessing like the Jewish monarchs a spiritual as well as a civil character, of which the circumstance of his being anointed was an outward indication, was expected to employ spiritual as well as civil officers in the execution of his trust.† That the solemn ratification of all Church censures continued to be thought part of the office of his spiritual advisers appears from the plan of Church Discipline approved by King Edward VI. The moment was not one in which Ecclesiastical power was unduly asserted, yet in the provision made for appeals to the King at the close of the Reformatio Legum Ecclesiasticarum, it is stated that in such cases "eam vel concilio provinciali definire volumus, si gravis sit causa, vel a tribus quatuorve Episcopis, a nobis ad id constituendis."‡

This accordingly was the interpretation which practice put upon the King's authority. In the Court of Delegates by which it was administered, "there are no footsteps of any of the nobility or common law judges till the year 1604, nor from

* This was a very early opinion, as may be seen from Lyndwood. "Rex unctus non mere Persona Laica, sed mixta secundum quosdam." Provinciale 3. § 2. It is referred to in a well known note of Speaker Onslow's on Burnet's Life and Times.

† The principle of this Appeal to the King is explained and vindicated with much ability by Mr. Gladstone in his "Church Principles traced to their results."

‡ De Appellationibus, § 11. p. 283.

1604 are they found in above one Commission in forty till the year 1639."* The Great Rebellion however introduced a different custom, from which flowed the abuse complained of by the Royal Commissioners in 1831, of employing "junior advocates as Judges of Appeal."† The Report makes no allusion to the cause of this abuse, viz. that a jurisdiction which was designed to be exercised through Spiritual functionaries, has passed altogether into the hands of Civilians. Undoubtedly the multiplication of civil questions has made legal co-operation essential for their right adjudication, yet it is surprising that when the Royal Commissioners state that "the Privy Council being composed of Lords Spiritual and Temporal, the Judges, &c. seems to comprise the materials of a perfect Tribunal,"‡ they should not have suggested that some of the former class should take part in any judgment respecting Spiritual Appeals. A stipulation of this kind forms part of the Clergy Discipline Bill, which enacts§ that "no Appeal shall be heard before the Judicial Committee of the Privy Council," unless a Spiritual Peer is present. In another part of the same Act, it is provided that charges against a Clergyman shall be heard by the Bishop, "with the assistance of three Assessors, one of whom shall be an Advocate, who shall have practised not less than five years in the Court of the Archbishop of the Province, or a Ser-

* Gibson's Codex. Pref. xxi. † Report, p. 6.
‡ Report, p. 7. § Section 16.

geant at Law, or a Barrister of not less than seven years' standing, and another shall be the Dean of his Cathedral Church, or one of his Archdeacons or his Chancellor."*

It might have been hoped that similar conditions would have been attached to the exercise of spiritual powers in the Bill of the present Session. Connecting themselves as they do with questions of civil right, the presence of a lawyer is certainly no improper guard against technical inaccuracy. Yet as the subjects of discipline will often be of a purely spiritual character, there is room for the admission of persons of another class. But unhappily, according to the present Bill, the inferior branches of ecclesiastical jurisdiction are in many cases to be regulated by the same principle, by which the King's spiritual advisers have been excluded from all share in the determination of ulterior causes. The more immediate cases of ecclesiastical jurisdiction are to be converted into a purely civil process through the very same steps by which the jurisdiction of the Court of Delegates was perverted and destroyed.

This may be seen in the species of arbitration to which is to be submitted the right of seats and the erection of monuments. The more difficult cases of law are in this instance excluded by the reference allowed to the Court of Arches: the questions in dispute therefore will be such as affect the public convenience and the proprieties of wor-

* Section 11.

ship. With these nothing has more materially interfered than the misappropriation of our Churches. What question then can more naturally be referred to those whose education and habits render them familiar with such subjects? Where can it be more fitting to look to general considerations as well as to the bare claims of pecuniary right? It might have been supposed therefore that though the presence of a lawyer might in these days be thought expedient, yet that ecclesiastics would certainly have the predominance in such adjudications. The license given by the Clergy Discipline Bill, of taking one lawyer and one divine, might have been supposed a natural proceeding. But the 104th Section of the present Bill proposes, that the Bishop shall refer the matter to "his Chancellor, to a Sergeant at Law, or to an Advocate of the Court of Arches, or to a Barrister of seven years' standing." It is possible indeed that the Bishop's Chancellor may be in holy orders, but according to this Act, the Vicar-General who performs the same function for an Archbishop, will always be a layman, and in two Dioceses therefore at all events it is proposed to take this power out of the hands of the clergy altogether.

The same tendency is shown in the provision for appeals to the Archbishop. These appeals may be of two kinds, they may relate either to charges against the clergy under the Church Discipline Act,* or to any case of Church Discipline,

* Sec. 129.

which has been decided in the Bishops' Court.* Now since all charges against the clergy for spiritual offences must proceed according to the provisions of the Clergy Discipline Bill, and since all spiritual censures must issue from the Bishops' Court, there is no question of doctrine and discipline which may not form the matter of such appeal. Here therefore it might be expected, (however desirable the presence of a lawyer) that the co-operation of divines would not be deemed unnecessary. And so much seems recognized by the Clergy Discipline Bill. But the same personages appear as before, forming apparently the favourite standard of appeal on all questions of a spiritual nature. If the Archbishop be unable to preside himself, which from health or business will often happen, he "shall appoint by commission three persons, being, or having been, an Advocate of Her Majesty's Court of Arches, of ten years' standing, at the least, or being, or having been, a Sergeant at Law or a Barrister at Law of fifteen years' standing at the least."†

When it is considered that in this appeal difficult questions of theological orthodoxy will have to be sifted, and when it is remembered what is the ordinary attention which has been paid to such subjects by laymen who for "fifteen years' at the least," have been battling for fame and profit in Westminster Hall, it is difficult not to be reminded of

* Sec. 100, and 131. † Sec. 129.

the remark of a popular writer: "our Legislature, for the joke's sake, I suppose, has constituted men of no knowledge into a peculiar court for trying the most nice and complicated questions." And even if the Archbishops make such exercise of their discretion as to select representatives from the Court of Arches, still it may be doubted whether its advocates will be so well versed in such questions as to compensate for the total exclusion of those who from profession and habits are familiar with theological arguments. For without saying any thing in derogation of the eminent men who have practised in Ecclesiastical Courts, it may safely be affirmed that they have not been likely of late years to be very conversant with such causes as affect the spiritual rights of the Church, because such causes have been of such infrequent occurrence. An inspection of the cases decided in our different Courts, as they are stated in the Report of the Royal Commissioners, will show that of late years there have been scarcely any of really ecclesiastical cognizance. To this must be attributed the otherwise unaccountable ignorance betrayed by persons, who might have been expected to be familiar with the ordinary principles of the Church of England. Of this ignorance some glaring instances have lately been noticed by the Lord Bishop of Exeter, in a charge as remarkable for justice of thought as for power of expression. His remarks make it unnecessary to speak of the mistakes of persons, whose stations entitle them to

the utmost respect, and whom he truly describes as "very learned, but in another faculty." It would be easy indeed, were it not an invidious task,* to point out the strange unacquaintance

* In the course of this proceeding the opinion was advanced that previous to the 13th Charles II. "persons not episcopally ordained might hold ecclesiastical promotion in the Church."—Mastin v. Escott, p. 210. The assertion moreover is so made as to lead to the inference that till that time some other mode of ordination was allowed in the English Church. And this conclusion would so naturally be adopted by unobservant persons, that it seems expedient to point out the real nature of the case.

It must be remembered then that the Church of England was not formed in the sixteenth century, but only *re*formed, and therefore that all her laws which had been in force before that time, continued in vigour, except so far as they were expressly repealed, or were found to have been inconsistent with the laws and usages of this realm.—25th Henry VIII. 21. It is hardly necessary to state, that from the time of the Apostles until the sixteenth century, no one was ordained Bishop, Priest, or Deacon, save by one or more Bishops.—Vide Preface to Ordination Service. This practice is sanctioned in places innumerable, beginning with the first Canon of the Apostles. Thus Lyndwood says: "Archidiaconus possit Ecclesiam alicui concedere, tamen is qui recipit talem Collationem debet recurrere ad Episcopum, ut videlicet auctoritatem ab eo recipiat in administratione spiritualium: alias enim diceretur fur et latro."—Provinciale 3. 2. Now what Act was passed in the sixteenth century by which this ancient custom was altered? The only two which could in any wise affect it were the Preface to the Ordination Service, first published in the same year with King Edward the Sixth's first Book, A. D. 1549, (not, as Bishop Gibson says, Codex 1. xvii., *in* the first book) and re-sanctioned by authority of Parliament in the first and the eighth years of Queen Elizabeth—and secondly by the 13th Elizabeth, § 12.

The Preface to the Ordination Service provides "that no man not being at this present Bishop, Priest, or Deacon, shall execute any of them, (these offices) except he be called, tried, examined, and admitted according to the form hereafter following."

This act gave no real sanction to any previous orders unless they were accordant to the ancient laws of the land. For had a legal question arisen whether a party were Bishop, Priest, or Deacon, it must have been determined by the former laws except as modified by this subsequent one. The matter however seems to have been otherwise understood, and when this

with the most common-place matters of Church regulation, betrayed by other parts of a recent proceeding. What can be thought of the intimacy of our leading ecclesiastical lawyers with such sub-

act was renewed in the first year of Elizabeth, those who had been ordained abroad in Queen Mary's reign were supposed to be already Priests and Deacons. Still as respected the future there was no real opening made for similar irregularities. The precedent however which had been set seems to have led to them, and apparently with a view of obviating any further doubts, without the appearance of an ex post facto law, an act was passed, 13th Elizabeth, c. 12, which provided that every person "who doth or shall pretend to be a Priest or Minister of GOD's Holy Word or Sacraments by reason of any other form of ordering, &c." shall subscribe the Articles in the Bishop's presence. It was further declared that no one should hereafter be admitted to any Benefice with Cure, who was not a Deacon.

Now while this act did not expressly legalise the orders which had been irregularly obtained in Queen Mary's time, it effectually cut off similar cases for time to come. For every one who had "any ecclesiastical living," was bound to sign the Articles, one of which sanctions the Ordination Service, and therefore affirms that passage in its Preface which declares that none should exercise priestly functions except those who were in orders when the act was passed, and those who were hereafter ordained according to its forms. Besides, the order that no person be nominated to a "Benefice with Cure," except he be "a Deacon," was an effectual bar to the admission of the Puritan ordinations. For the ecclesiastical order of Deacon was rejected by foreign Protestants, and therefore Travers was stated to be "in sancto verbi Dei ministerio institutum," (Fuller, B. 9, § 51.) and Whittingham confesses himself to be "neither Deacon nor Minister, according to the laws of this realm," (Strype's Annals, 2. ii. § 522.) but asserts himself to have been chosen at Geneva to the office of "preaching the Word of GOD and ministering the Sacraments."

There is nothing here therefore which could sanction the notion that persons who had received other than Episcopal orders after the Ordination Service had been enacted in the first year of Queen Elizabeth, were allowed to discharge spiritual functions in the Church. Those who had been ordained abroad during Queen Mary's reign are not expressly recognized, though a sort of implied sanction is given to them by 13th Elizabeth, 12.; but forasmuch as every one from that time was to subscribe the Articles, each person must needs bind himself to a declaration that for the future no mode of ordination but the Episcopal was to be employed in the Church.

jects, when on the important question, to whom the Church of England entrusts the power of ministering the Sacrament of the Holy Communion, two of them could express themselves in terms so hesitating

An objection may perhaps be made to this statement, on the ground that Whittingham, Dean of Durham, maintained his position, even when proceeded against by Archbishop Sandys. Yet had his orders received none but this implicit and uncertain sanction, it may be supposed that he would have been unable to endure the searching ordeal of a legal inquiry.

But Whittingham's strength, had his cause fairly come into a Court of law, which was prevented by his death, lay in the fact that his benefice was without cure of souls. The ancient Canon law, while it forbade any to be appointed to a Vicarage without Deacon's orders, allowed benefices which had no cure of souls to be held by persons who were in any of the minor orders. "Vicarium ad minus oportet esse Diaconum." "Debet instituendus in beneficio ad minus habere primam tonsuram."—Lyndwood, 3. 6. The lawyers of Queen Elizabeth's reign even asserted that "in former time a mere layman might have taken a title to a Deanery, Prebend, or other Benefice without Cure." And Bishop Gibson speaks of "the admission of some few laymen to the dignities" of this class in the reign of Queen Elizabeth.—Codex, i. 805. Now since the lower orders, according to the ancient law, might be conferred by Priests, (Gelasius's Decrees, § 6. and Con. Trid. 23. § 10.) Whittingham could fairly claim such ordination as would qualify him by dispensation to hold his Deanery. The ecclesiastical law indeed required that such parties should proceed to the higher orders, but the practice of protracted dispensations had in fact superseded this necessity. Accordingly Archbishop Whitgift remarks, in answer to Travers, who had pleaded this case of Whittingham, that if "Mr. Whittingham had lived, he had been deprived without special grace and *dispensation*."—Strype's Whitgift, App. 3. 108. And the Archbishop states his own view of the law, as then existing, respecting those who were allowed to *minister* in the Church. "The laws of this realm require that such as are to be allowed as Ministers in the Church of England, should be ordered by a Bishop."—Id.

The real change therefore which was made by the 13th Charles II. was not the providing that orders should only be derived from Episcopal ordination, but the extending the provision made respecting benefices with cure of souls to all ecclesiastical promotions. Nor can it be truly said that persons not episcopally ordained, might previously hold "ecclesiastical promotion," unless allusion is made to such "promotion," as might under dispensation be held by laymen.

and uncertain, not to say so inaccurate, as the following: "*I believe* that in every part of the communion service a Priest is essential."—Answer. "The Deacons administer the cup constantly at the communion, *I believe*."*

The course of events, as may be seen from the evidence furnished by the Commissioners, is continually increasing the tendency, to decide testamentary and matrimonial cases by the principles of the common law, and the future inmates of Doctors Commons are not likely therefore to be more conversant with ecclesiastical principles, than those who have preceded them. Such persons, we may be sure, will be no competent judges of the strictly religious question, who are, and who are not, fit communicants.

It is not of course implied that holy orders confer, as though by magic, a capacity of deciding on this subject, which laymen cannot possess. It is truly remarked by Johnson, that there is "no greater necessity that he who acts as a spiritual judge should be a Bishop or a Clergyman, than that he who acts as a temporal judge should himself be a King. It is sufficient that he acts in the name of the Bishop and by laws spiritual."† If laymen could be found, who could give due time and thought to such subjects, they might properly be invested with this authority. A few might be named whose opportunities and tastes would render their decisions invaluable. But the generality of

* Vide Case of Mastin v. Escott. † Clergyman's Vade Mecum, i. 276.

persons in every class of life must live by their labour; and how are ecclesiastical judges to be supported? Two modes only seem conceivable; either the enjoyment of endowments, or the exacting of remuneration. Now for such parties, what endowments are provided? The only thing of the kind which the present Bill contemplates, is the office of Chancellor, with an income of £200. or £300. per annum. This will not be sufficient for the support of persons of education. They must eke out their means therefore by fees. They must look to the law as a mode of living. Now since questions of a purely theological cast will not be lucrative, since the admission to communion ought to be detached from all worldly considerations, how certainly will this jurisdiction be secularized, neglected, made subordinate, if it be compelled to take place among the ordinary questions of professional competition.

An attempt was made in Germany in the first energy of the Reformation, to carry on a system of discipline through the gratuitous service of some of the greater lawyers. Pontanus, the Chancellor of the Elector of Saxony, declares himself "to have commenced a sort of Consistory, especially for matrimonial cases, with Luther's full satisfaction, which was to be carried on gratis, without salary."* But the scheme appears to have speedily proved abortive. The German Courts suffered under the same evils which Bishop Gibson complains of† in

* Seckendorf's Hist. Luth. 3. 19. 72. † Vide p. 61.

our own. And the self-same evils will be renewed, if the sacred question of admission to communion is intermingled with mere worldly interests.

The associations also which Bishop Gibson thought so undesirable will be again revived. Men will not separate between the functions which a barrister or a sergeant at law discharges in his civil and in his spiritual character. Unless holy functions are discharged by men who are set apart, the people in general will not esteem them holy. And how can this be obtained save by the employment of the clergy? Where shall men be found, excepting among them, who having endowments for their support—being excluded from the competition and exempted from the necessities of life—can turn all their thought towards the Church's service? The object proposed is not less than the building up a new system of ecclesiastical discipline. Whether the present courts may hereafter be made subservient to it is a further question; as at present constituted, they hardly subserve to it at all. The best chance of their doing so would be the establishment of tribunals of a spiritual nature, with which all purely ecclesiastical jurisdiction might hereafter be united. The basis, on which such a superstructure can alone be raised, is the right of admission to the communion. This must be made matter of adjudication therefore by some authorized court, in which the processes must be unaccompanied by fees, and the judges independent of salaries. Such persons, it is obvious, will be found only among the beneficed

clergy. In each district a clergyman must be selected of station and experience, who may call in the aid of some of his brethren to decide the facts of the case, referring always to his superior, the Bishop of the Diocese, in respect to the principles which are to guide his judgment. Perhaps it would not be thought improper that in such a case as this, where no civil interests are at stake, the old custom of compurgation should be employed. A party respecting whose admission to Christian communion there was any question, on the ground of facts alleged against him, might be received, if any given number of his fellow-parishioners would give their solemn assurance, that the charges alleged against him were believed by them to be unfounded. Those who are acquainted with the practical detail of pastoral duty must be aware how many perplexing questions, such a power of reference, and such a principle of determination would decide. And the judges of such spiritual Courts—for such they would be, under whatever title—would soon establish an order and principle of proceeding, just as the rules of Chancery have in fact arisen from the practice of such men as Lord Finch and Lord Eldon.

In order to give effect to such a spiritual judicature, the Clergy must be called upon to observe the Church's rule of requiring the names of Communicants, and her Canons against the reception of strangers without enquiry, must be amended and enforced. To give notice on every occasion would

be needless, but those whose names did not appear on the list of the Church must be required to procure their insertion. How these points might be enforced shall be noticed in the next Chapter, meantime it should be observed that in what is here stated, no application to Parliament is contemplated. It would seem indeed to be worthy of the wisdom of Parliament, and it may fully be expected after the manner in which the present Bill has been received, that the penalties attendant on excommunication should be done away, and that the power of pronouncing it should not be possessed by any tribunal, which is mainly conversant with worldly matters. The regulations by which this sacred sentence was brought into contempt were adopted by Parliament, and can be disanulled by no other power. But to this, our expectations from Parliament must probably be limited. Its members are not sufficiently conversant with our system to devise any plan which would be adapted to it, and it is better for us that they should not make the attempt. Were parliament comprised altogether of Churchmen the case would be different, but independently of the ground of right, which shall be noticed in the next Chapter, it could not be otherwise than painful that the most sacred institutions should be handled in that rude and irreverent manner, which must be expected from those who are not members of our communion.

Whatever is proposed then must be of a kind which the Church is able to do for herself, without

application to the Imperial Parliament. And in order to show how much the Church is able, even with her present means, to effect, it may be well to insert in this place the proposal made above one hundred years ago by the learned and pious Dr. Marshall, in his work on the Penitential Discipline of the Primitive Church. The plan, whether it be thought desirable or no, shows the powers, which the Church has in her hands, did she chose to employ them. It may be considered also whether it might not obviate some other difficulties at present experienced, as for instance, the insufficient manner, as well as the very inconvenient time,* commonly adopted for Confirmation. The latter of these is one of the greatest practical impediments to the efficiency of the Church system, as the former is one of the specific allegations brought against it by the subtle Dr. Wiseman. It must be observed that by "Penitentiary" and "Penance" Dr. Marshall means pretty much what might be otherwise expressed by "Spiritual Judge," and "the power of segregation from the Church's Communion, till satisfactory evidence is afforded of repentance."

His proposal then is as follows.

"That a Chorepiscopus (or Suffragan) be appointed in some Market Town, or place of great resort, within every rural Deanery, to whom should

* In former times our agricultural population was not so incessantly occupied; but at present, the interruption of their labours during the hay or wheat-harvest, when the Parliamentary Recess allows the Bishop to confirm, is so great an inconvenience, that the difficulty of preparing them for Confirmation is exceedingly increased.

appertain whatever heretofore was committed to the Penitentiary, in the district he should belong to, and in the villages adjacent to it, and that he should accordingly be entrusted with the management of *Discipline* in all the parts assigned him for his Province; yet with this restriction, that he should be subject and accountable to the Bishop of the Diocese, who by his means might be acquainted with the state of his people, much better and more fully than it is possible he now should be."....

"It must be acknowledged that the Bishops of the Primitive Church had generally a nearer relation than now they have, to the people under their care, and had more practicable means of keeping up with them an intercourse and correspondence."

"Now Suffragans would go a great way towards a redress of the grievance, which arises from this Article; each of our present Bishops would then be a sort of Archbishop; and our two Archbishops would then be Patriarchs."

"If every place of great resort had one of these Suffragans, the whole regimen of Penance," [admission to communion or segregation] "might be commodiously fixed in him." "The large extent of our Dioceses could no longer be then complained of; nor the incapacity, which the Bishop thence lies under, of acquainting himself much either with his Clergy or his people." "There is already a law," ....." appointing Suffragans to be constituted in such places, as are therein specified; and moreover empowering the Bishop of any Diocese to nomi-

nate two spiritual persons to the King's Highness, for his choice and confirmation of one of them to be Suffragan to the said Bishop, and to have such power, honour and jurisdiction as should be specified in the Commission granted to him by the Bishop. And the King was to present the person so nominated and confirmed to the Archbishop for his consecration."

"The reader will observe that I desire no increase of secular power to the Church; nor any enforcement of her censures from the civil magistrate. No! let her censures, as they are in their nature purely spiritual, continue so in their use, whenever they are applied to purely spiritual occasions. And let them who despise go on to do so, till GOD in His mercy shall awaken them to a sense of those terrible words: 'he that despiseth you, despiseth Me, and he that despiseth Me, despiseth Him that sent Me.'"*

Dr. Marshall's suggestions may in part have been derived from Usher's reduced plan of Episcopacy,† to which they bear near resemblance.

* Penitential Discipline of Primitive, Church, p. 240—246.

† One of his Propositions was, "Whereas by a Statute in the 26th of Henry VIII., (revived in the first of Queen Elizabeth) Suffragans are appointed to be erected in twenty-six several places of this Kingdom, the number of them might very well be conformed unto the number of the several Rural Deaneries, into which every Diocese is subdivided: which being done, the Suffragan, (supplying the place of those, who in the Ancient Church were called Chorepiscopi) might every month assemble a Synod of all the Rectors, or Incumbent Pastors within the precinct, and according to the major part of their voices, conclude all matters that should be brought into debate before them. To this Synod the Rector and

Should any thing of the kind however be undertaken, the number and position of the places, which should be fixed upon as centres for the exercise of discipline, should not be determined, as the preceding suggestions would imply, on any arbitrary principle, but by a reference to those Courts for which a substitute would be provided. The intention would be to institute tribunals for the exercise of ordinary discipline. This was formerly administered, as noticed in the last Chapter, by the Archdeacon's Court. Such a Court was held in the centre of every Archdeaconry, and thus the detail of business was transacted at no great distance from every one's abode. The most reasonable mode of introducing a new system would be to conform it to the old divisions. The ancient localities were selected as being neither so numerous as to render the support of Courts difficult, nor so distant as to render recourse to them inconvenient. And the same considerations would be applicable at the present day.

Let it be supposed then that ecclesiastical judges

Churchwardens might present such impenitent persons, as by admonition and suspension from the Sacrament would not be reformed; who if they would still remain contumacious and incorrigible, the sentence of excommunication might be decreed against them by the Synod, and accordingly be executed in the Parish where they lived."

The division of Dioceses through the revival of Suffragans was a favourite notion at that day, as may be seen from Gibson's Preface to his Charges, p. xii. "The Discipline of the Church," says Bishop Gibson, can never be "in a complete and perfect state, as long as the districts to be visited remain in many instances so unreasonably large." "The evil might be at least mitigated by the appointment of Suffragan Bishops, according to the Statute of King Henry VIII."

were fixed on such benefices of every Diocese as were competent to their maintenance—whether natural delegates of the Diocesan, as in the case suggested by Dr. Marshall, or mere temporary representatives. Their duties would in many respects be sufficiently apparent. They would first ascertain who were actually in communion with the Church in the district under their superintendence. They would then desire the clergy to receive no one without notice to the Lord's Table, save those who were included in their present list,* or those whom they had reason to know had been elsewhere admitted. They would require that every one who gave notice should render a satisfactory testimony of his fitness to be admitted, and would desire that every question of the least peculiarity should be referred to themselves. On more difficult questions they would in their turn refer to their superior. Some system would probably be devised, by which more notorious offenders should make profession of their repentance, and such means adopted as should serve as a practical protest against the notion, at present so prevalent among the poor, that marriage is a compensation for previous immorality. And it would of course be required that no one should be

* At St. Andrew's Church, Aberdeen, notice is given, on the Sunday previous to the administration of the Holy Communion, that those who design to communicate should go out at the south door, where the curate is ready to take down their names as they pass. In other places in Scotland tokens are given out at the daily prayers, which are usually attended by those who purpose to communicate upon the ensuing Sunday.

in any way recognized as a member of the Church, should be admitted for example as a sponsor for others, who had not himself been formally enrolled among the number of the faithful.

And here it is that a difficulty would be encountered. The sixty-eighth Canon enjoins that a minister refusing "to bury any corpse that is brought to the church or churchyard, except the party deceased were denounced excommunicated majori excommunicatione for some grievous and notorious crime, and no man able to testify of his repentance, shall be suspended by the Bishop of the Diocese from his ministry for the space of three months." The funeral service itself makes a further exception in reference to those who are unbaptized, or have laid violent hands upon themselves.

Here then arises the obvious difficulty, that the clergy are compelled, in this most sacred and affecting ceremony, to recognize all persons who are baptized as members of the Christian communion, unless they have been segregated from the congregation by a particular process, which the State has rendered virtually impossible. A heavy penalty, that is, is laid upon the conscientious exercise of the duties of the clergy, unless relieved by an alternative, which the State has interdicted. Now such a mode of dealing as this would be tolerable, if used for the mitigation of some penal statute. We can pardon the Mahomedan chief for allowing this subterfuge to be a door of escape to his victim. "The Persian," says Gibbon, "complained of intolerable

thirst, but discovered some apprehension lest he should be killed whilst he was drinking a cup of water." "Be of good courage, said the caliph, your life is safe till you have drunk the water: the crafty satrap accepted the assurance, and instantly dashed the vase against the ground. Omar would have avenged the deed, but his companion represented the sanctity of an oath."* But what Eastern tyrant ever availed himself of such a means of crushing a delinquent? And surely it is altogether incompatible with the equity of British feeling. Yet is this the position in which the whole body of the English clergy is at present placed, and their position will be rendered more plainly intolerable if, as is probable, that sentence shall be altogether taken away, the existence of which their formularies necessarily contemplate.

In these remarks no reference is made to the disputed question of lay baptism, the *validity* of which may be readily admitted, by those who totally deny its *sufficiency*. This distinction has been most ably pointed out by the Bishop of Exeter; that the Court of Arches failed to discern it may excite the less surprise, when we reflect that it was not fully seized even by the acute Waterland. He would hardly have disputed as he did the validity of lay Baptism, had he fully discerned what appears to have been the habitual view of the early Fathers, that Baptism into an heretical or

* Gibbon's History of the Decline and Fall, &c. § 51.

schismatic body could not be repeated, but that its virtue did not come out, so to speak, till the party baptized was brought into communion with that true Church to which the blessings of GOD's grace are especially promised. Still it was essential that the body into which parties were baptized should be in some sense a portion of the Church, though a schismatical or heretical one, (for to be a portion cut off from the Church, implies that what is severed has had some inherent participation with its body,) and the validity therefore of its orders was taken account of, not because it was necessary that every candidate should be baptized by a minister, but because where no ministry existed, there could be no branch at all of the Catholic Church.

Baptism therefore into an heretical or schismatical body was not supposed to admit persons to the Church's communion, until some subsequent act did away their participation in schism or heresy. In the case of infants, for whom the Church in her charity is ready to believe what she desires, it may be urged that such renunciation of division would have been their choice, and therefore that the effect of their Baptism would have been completed. But what charity can assume this in the case of those, who have grown up in open and avowed opposition to our Communion? How can we think that those belong to our body, who have lived separate and died avowing their opposition?* The same argu-

* Can it be supposed that those who drew up a funeral service for the bodies of the "dead in Christ," intended it to be used on such occasions

ments might probably be used in the case of persons, whose fearful end it has been to be cut off in

as that described in the following extract from the Evening Mail of February 24th.

Funeral of the late Richard Carlile.—The remains of this notorious individual were deposited at the Kensal-green Cemetery yesterday. At 2 o'clock in the afternoon a vast number of persons were assembled in Bouverie-street, Fleet-street, to witness the departure of the funeral *cortège*. At 3 o'clock a hearse and five mourning coaches drove up to the house where the deceased was lying. The funeral procession moved on, and during its progress attracted considerable attention. On arriving at the grave a considerable delay occurred from the clergyman having had to read the burial service over several bodies before the arrival of the deceased. When the officiating divine, the Rev. Josiah Twigger, arrived at the grave, accompanied by the clerk, one of the deceased's sons addressed the clergyman as follows:—"Sir, we want no service over the body of our late father; he passed his life in opposition to all priestcraft, and we protest against the service being read." The reverend divine replied—"Sir, I must do my duty." Another son of the deceased here stepped forward and said—"We have purchased this ground as the resting place of our deceased parent, and I object, with my brothers, to the reading of the funeral service." (Here loud cries of "Hear, hear," were given by the mob assembled round the grave.) The clergyman continued—"I must and will do my duty, and at your peril abide the consequences that may occur from any opposition to the usual observance on such occasions." Another son—"Then, Sir, we will not hear it." Here the mob cried out, "Yes, yes! leave the grave: let all the friends of Mr. Carlile go away." At this moment the party assembled quitted the grave, the mourners retired into the coaches, and the clergyman proceeded in the most impressive manner to read the service, during which he was frequently interrupted by ribald jests from a few stragglers who had kept at a short distance from the spot. It is due to the sons of the deceased to state, that they gave their opposition in the most respectful tone possible, but their example was not imitated by many of the followers of the deceased. After the clergyman had retired, a rush was made to the grave, and a son of the deceased addressed the crowd as follows:—"I beg to state that I, with my family and friends, were opposed to the performance of this service; we did not require it, and have given every opposition in our power to its being done. I thank you all, in the name of my late father, for your attendance here on this occasion." Having said thus much, he and the followers of the funeral departed.

the commission of some act of open sin. In such cases, it is obvious, as two at least of their Lordships* have instructed their clergy during the last summer, that the funeral service of the Church ought not to be used. This is nothing more than was said by a Prelate of great eminence, Bishop Kennet,† many years ago, who even went so far as to recommend that in such cases a part of the Church Service should be omitted.

In this situation then the Clergy of the Church of England at present stand; informed by their Bishops that consistently with the principles of the Church they cannot perform certain acts, which if they refuse to perform, they must, humanly speaking, be exposed to prosecution and punishment. What means of escape are open to them will be noticed in the next chapter, in this place it is sufficient to observe upon the inconvenience as well as the

* "To infer from a permission given in cases of urgent necessity, and that too when all the parties concerned, though laymen, were yet members of the Church, that, therefore a heretic or a schismatic may without necessity, and acting in open defiance of the Church, merely by using the Scriptural form of Baptism, confer the full privileges of the Church; and that the Clergy are bound to give their services in burying such a person, though not recognised, directly or indirectly, as a member, is certainly wrong in Christian theology, as attested by the uniform practice of the Church in all ages, however deficient the ecclesiastical laws of this country may now be in providing for such cases."—Bishop of Llandaff's Charge. "I scruple not to affirm, that should such ever be the decision of any court, it will be contrary.....to the uniform doctrine of the primitive fathers, to the decrees of councils, to the whole stream of authorities respecting the effect of heretical and schismatical baptism."—Bishop of Exeter's Charge, p. 41.

† Mastin v. Escott, p. 200.

unfairness of their present situation. Is it a wholesome or safe thing that so large a body of persons should be continually within the danger of the law for an act, dictated by the principles of the Established Church? Will it be seemly that persons of learning and influence, whose character contributes greatly to the stability of society, should be publicly arraigned and punished, as many of them ere long will probably be, for doing their duty? For though many will shrink from the publicity or the loss which persecution involves, yet now that their Bishops have plainly spoken, numbers will undoubtedly be found to hazard every thing rather than violate their consciences.

Will the notorious injustice of the prosecution speak favourably for our ecclesiastical laws? Is it right that persons should be punished by one clause of a Canon, when the other, which is necessary to its explanation, is rendered nugatory by the interference of the State? Is not this an instance, in which if it occurred in a transaction between two laymen, the civil Courts would grant relief? Suppose the case of a bet or wager for example, the performance of which had been rendered impossible by some new national enactment. Would it not be esteemed a fraud to hold a person to compliance with terms, which such unlooked for interference rendered inapplicable? Are there not cases enough in our law books, in which this has been decided? How then can the clergy be subjected to a rule, which in all common dealings is held to be unjustifiable.

The supreme court, which lately decided against a clergyman, somewhat severely perhaps, but not exactly in the case contemplated in these pages, has put this matter in a different light, which, admirably as it is handled in another place,* it is impossible not to notice. If the clergy, it has been said, find any difficulty in obeying the law, why do they not act like other public functionaries, who withdraw from such offices as it is against their conscience to discharge? This advice has unhappily been acted upon by some clergymen, who have made their objections to the Funeral service a ground, not only for retiring into lay-communion, but even for separating from the fellowship of the Church. The last act is of course clearly indefensible, no objection which persons may have to some parts of their ministerial duty being any justification for breaking those rules of Christian unity which are set forth in Holy Writ. For this, nothing can be a sufficient excuse but the exacting, as is done by the Church of Rome, unlawful terms of lay-communion.†

But are the clergy justified in withdrawing from

* Bishop of Exeter's Charge.

† The Church of England exacts nothing, as the terms of lay-communion, but purity of life and the admission of the ancient creed, to which either at Baptism or Confirmation all her children are required to pledge themselves. No one therefore is justified in separating from her communion, who is able to receive the Articles of this Belief. The Church of Rome requires in addition a subscription to the twelve modern Articles appended to the creed by Pope Pius IV., containing various statements, which, according to the opinion of the ancient Church, were neither essential nor true.

their sacred office, because they cannot obey the enactments of the State? The Court in question gave its advice, under the impression obviously that the clergy were simply functionaries discharging a certain office by royal commission. This notion may have arisen from the idea entertained of the royal supremacy. But is not the Queen supreme over all persons within her realm? Is she not as much therefore the head of every family, as of that great family, which GOD has gathered together under the title of His Church? Would not her laws therefore supersede all duties in one case as well as another? Suppose then that it were enacted that filial duty and parental affection were to be abandoned. Would such a law supersede those original relations of man's nature, which, though recognized by civil society, have their source in a higher obligation? Must we blot out the fifth commandment from the tables of the law? And if not, why should the duties of the clergy towards their spiritual Parent be annulled by any external constraint? Was this doctrine ever heard of before among Christian men? Was it ever dreamed, that the threats of persecuting power justified men for retreating from responsible duties? Would it have justified Moses for abandoning his office as a lawgiver, or St. Paul for ceasing to be an apostle? The rule of Christ's Church on such matters was expressed long ago by its first apologist: *τοσοῦτον δύνανται καὶ ἄρχοντες πρὸ τῆς ἀληθείας δόξαν τιμῶντες, ὅσον καὶ λῆσαι ἐν ἐρημίᾳ.*[*]

[*] Justin Apol. i. § 12, p. 50.

That this is in truth the position of the clergy, that their first duty as ecclesiastics is to minister GOD'S law, is sufficiently obvious from the very terms of that obligation into which they enter at their ordination. Every civil functionary, when admitted to his office, promises to discharge it as owing certain duty to the superior under whom he is placed. Independently of the oath of supremacy, which expresses the relations which are common to all subjects, he comes under a particular relation to his worldly superior, by reason of the office with which he is entrusted. But what do the clergy promise, and to whom? The inferior orders promise obedience to the Bishop and other chief ministers, the Bishops to the Archbishop, but there is no such promise on the part of the Archbishop to the Queen. On the other hand, there is express mention of the authority which the Bishops have by GOD'S word; an authority therefore which is derived through no earthly superior. And the clergy give likewise an express promise "to minister the sacraments and the discipline of Christ as the Lord hath commanded, and as this Church and realm hath received the same, according to the commandments of GOD." The last clauses are the only ones in the whole of their commission, which could in any wise be construed as binding them to such an observance solely of the scriptural rule as Parliament permits, and even these words, taken with their context, lead to a directly contrary conclusion; for they bind the clergy to that system which the

Reformers of the Church of England enjoined, having found it accordant to GOD'S commandment, and of this system the practice of excommunication formed an inherent part. The submission is not to whatsoever Parliament may enact, as when civil rights alone are considered, but merely to such requirements of this realm, as are accordant to GOD'S commandments.

There can be no doubt therefore that the clergy would not be justified in such a retreat from danger as the words alluded to recommend: they are bound on the other hand, as the Bishop of Exeter suggests, to remain at their posts, and submit with patience to whatever persecution awaits them. And yet there is in this case a further choice, neither so painful as the one, nor so criminal as the other alternative, which it shall be the business of the next chapter to state.

CHAPTER V.

The necessity of a Church Legislature. Parliament not such a Legislature. How far Convocation is so.

We have now examined the scriptural grounds for thinking Church Discipline essential, as well as the causes which have occasioned its neglect. A course has been pointed out also, which may lead to its revival—the institution namely of Courts, which, without bearing the same name as those which long abuse has rendered unmanageable, may revive the spiritual jurisdiction which was their essential principle. But if such revival is to be effected, there must be some power of reconstruction within the Church: in other words we must have a *Church Legislature.*

The need of such a power is attested by various parties, and from different considerations. So complicated a structure as the Church of England, placed in the midst of institutions so shifting and manners so novel as those of modern society, must be expected to need continual expedients, in order to adapt its powers to the exigencies of the day.

Its principles indeed are built too deep into the rock of GOD'S truth to admit of alteration, but the guerilla warfare, which is going on around, requires to be continually checked by new methods of directing its unalterable resources.

Take the Colonial empire as an example. What, save the want of some power of giving expression to its collective opinion, can have led the English Church to acquiesce silently in that fearful and unparalleled crime of which this country has been guilty. It is a fearful crime—for the vast extent of our colonial possessions has rendered our negligence more fertile in ignorance, ungodliness, and religious division, than would have been the positive efforts of any other country. And the crime is unparalleled—because of all the other great colonizing nations of Europe, the Dutch, the Danes, the French, Portuguese, and Spaniards, none have been by any means so forgetful of this obvious duty. Can it be doubted that one cause of this national sin has been that during the last century, when the system of our colonial empire was arranged and cemented, the Church of this land had no method of expressing her collective will.

The state of things, thank GOD, has now been altered. The State having prevented us from associating in that authorized manner which GOD'S providence had marked out through the institutions of our fathers, the zeal of good men has shaped itself into voluntary combinations. This took place particularly towards the commencement

of the present century, and we see the effect in that fuller form and developement, which the Church has gained during the last few years in our colonies. The present attempt to take advantage of the opportunity afforded by our successes in China, is a striking contrast to the fearful declaration publicly made there by our Ambassador* towards the close of the last century.

Yet still, though there is an improvement, blessed be GOD, in the aspect of affairs, how far does it fall short of that, which the Church of England might be privileged to witness. Nowhere is a system of Church Discipline so essentially needed as for the conversion of the heathen. This is manifest, if we look at the matter merely on the side of authority. The circumstances of Christian Europe, it may be said, are different from those of the newly converted cities of Greece or Asia Minor. This may account for a relaxation of those rules, which were given by the Apostle at Galatia or at Corinth. But why should a different system of dealing with the heathen be pursued on the shores of the Mediterranean or of the Southern Sea, in the islands of the Levant or of the West Indies? Are not heathen vices still the same? Is gospel holiness of a variable nature?

In countries long converted, a certain average

* The English never attempt to disturb or dispute the worship or tenets of others, &c.....they come to China with no such views.....they have no priests or chaplains with them, as have other European nations."—Lord Macartney's Journal, Oct. 21, 1793.

standard of morals has become predominant, which, low as it is, yet keeps in check the more monstrous vices. Poor as this apology is, it may yet be advanced as some apology for our departure from the strict rules of early Christianity. They were more needed, it may be averred, when an Apostle found it expedient to say, "Let him that stole steal no more," and another declared "that the whole world lieth in wickedness." Alas! we have too much reason to think that even in our own case the excuse is fallacious; but who shall even venture to urge it for the unhappy slaves of Hindoo depravity?

What is required for persons, whose whole habits need to be remoulded to the institutions of the gospel, is a code of laws, which, like those of the early Church, may gradually raise them above the dead level of Gentile immorality. Yet how can this be done properly, unless there be some legislative power in the Church? Our clergy are sent forth among the ignorant cultivators of our sugar plantations, or the still more corrupted votaries of Bramah, without the benefit of those rules and orders, which might guide them in the due performance of their arduous work. Those who are acquainted with our Negro population, report indeed that rules of Church Discipline might at this moment be introduced without difficulty, while their habits are unfixed, and their principles uncertain; and the Bishop of Madras speaks of Church Discipline as submitted to among the new converts

of the Carnatic; but how uncertain and ineffectual must be a rule, which is guided by no precedents, and backed by no competent authority! What shall exempt the Church on the one hand from the caprices of arbitrary power—on the other from the weakness of irresolution? What authorized system is there, what laws, what canons; what Fathers have met to consider the new circumstances of our heathen empire, and to adopt our ancient methods to the untried emergencies of oriental sloth or occidental barbarism? Surely there is much which is still wanting, if we would carry out the majestic design of Christ's kingdom throughout all the countries which obey the British sceptre, and weld together the incongruous usages of discordant tribes in the blessed unity of our Father's Church. We need a power of adaptation, which implies the necessity of mutual counsel;—a simplicity of purpose which nothing but a Church Legislature can supply.

If we look at home the same simplicity is exhibited. How plainly do the manufacturing districts discover the need of some increased powers of adaptation in the institutions of the Church. True, additional ministers and new houses of prayer are one essential requisite. But how much sooner would these have been provided, had there been an authorized body, whose office was to look abroad, and devise remedies against emergent evils? And in many cases some new scheme is imperatively called for by unexpected difficulties. One of these

is the temporary agglomeration of great masses in places, which in a few years are likely to be again deserted. Whether temporary remedies might in this case be expedient is surely worth considering. Yet what power exists which has authority to suggest them? The Bishop may do so indeed on his own responsibility, but there would be more order and uniformity if such things were done by our Spiritual Fathers with united counsel, and were enjoined with competent authority. The usage of one Diocese would not then be contrariant to the usage of another. We should not be in danger of reviving the evil complained of in the Preface to the Book of Common Prayer, that "there hath been great diversity in saying and singing in Churches within this realm; some following Salisbury use, some Hereford, some the use of Bangor, some of York." The Church would not be resolved into the independent action of unconnected chieftains, but would present the disciplined front of a well ordered army.

And however we may multiply our Churches, the people will never feel their connexion with our institutions till a system of superintendence shall be introduced, which shall make it manifest to them to what Christian body they pertain. This is the principle on which is built the success of Methodism, and which still separates numbers from our communion. Upon the busy throng of an increasing population, our present institutions do not adequately impress the truth, that the

Church system is a chain of which every individual is a constituent link. For this purpose it may be, that we need the aid of an intervening class between the educated and the ignorant. Yet how can this assistance be introduced—call it lay-agency or the order of sub-deacons—unless there be some Church authority, which having power to legislate for such persons, can employ their aid with safety. If men were admitted to some inferior order in the ministry, they would then become amenable to those rules, which were made by authority of the whole, and which, according to the present laws of the land, may be enforced upon the clergy.

Another evil which a Church Legislature might remedy, would be the illegal appropriation of the interior of our Churches. This is a subject on which the less need be said, because the public mind seems to have opened at once to a full sense of its importance. After the masterly manner in which it has been treated,* it were idle to do more than bear another testimony to the fact, of which every part of England furnishes examples, that the poor of Christ's flock have been too frequently excluded from their common portion, rather by the pride than the wants of their richer neighbours. On the other hand, if the poor have been driven from the Church, the rich have often been left in it without

* See particularly the able testimony borne against the abuse of pews in two adjacent counties, in the last charges of the Archdeacons of Chichester and Surrey; and also the interesting publications of the Cambridge Camden Society.

worship. Just as after the secession of the Plebeians, the hereditary occupants of Rome were in danger of starving amidst solitary splendour, so the inmates of the few spacious pews which occupy the area of many of our village Churches, are left to themselves, while that which should be the consentient worship of the whole population has dwindled into a chilling dialogue between the minister and his hired assistant. Ask why the people do not kneel in worship—they are lost amidst the lofty partitions which separate them. Ask why they do not take part for themselves in the Church's collective petitions—there is nothing to remind them that the house of GOD is the place of federal meeting for the whole Christian family. If the poor then have lost their birthright through the system of pews, the rich have lost their blessing.

But it is not to the present purpose to dwell on this evil, but to state one of the circumstances which has occasioned it. Whatever may be said of the pride and exclusive spirit of puritanism, undoubtedly the larger number of pews has arisen during the last century, and owes its existence to the want of a Church Legislature. Persons have naturally desired to be provided with convenient places for worship, which they might regularly occupy, and where they and their children might be placed together. This is doubtless a most reasonable demand. It is one thing to demand exclusive property in the area of the Church, and another to shrink from that interference and confusion which

would be the result in crowded populations, unless every regular attendant had a place assigned him. This is as desirable for the poor as the rich, and could be injurious to neither. And to take precedence of neighbours whose position in life they are wont to respect, is what the Christian poor would be the last to desire.

Such was probably the beginning of the pew system. But why did it pass so suddenly to the opposite extreme? Is there no limit between absolute inappropriation and inalienable property? Is there no mean between standing and being housed in square boxes? In practice there has been none, for want of Church Courts and a Church Legislature. The area of the Church has been the only place in the land, where the ancient right of the strongest has retained its hold. Men have been driven to fortify themselves by locked doors and lofty wainscots, for want of ready defence against interference. It would be easy to mention individual instances, in which those, whose families were intruded upon in an unwarrantable manner, were advised to lock themselves in for their own protection, because protection from Church Courts was too expensive and uncertain. Here then is one great cause of the growth of pews. In the ancient Church the Subdeacons were charged to assign to every one a suitable place, and not to let one person inconvenience another. This present authority put it in each man's power to obtain immediate justice. Nor were family connexion and the claims of situation

necessarily forgotten. But the lawlessness of the middle ages, driven from our hills and wastes, has taken sanctuary in the area of our Churches, they are occupied by a set of *petty fastnesses*, and it will not be the work of any ordinary reformer to reconquer them for the common good.

It were easy to mention other circumstances as showing the expediency of a Church Legislature. It is no trifling evil that many violations of law are habitually practised, by which scrupulous consciences are offended, and a door is opened to greater irregularities. The clergy have given a solemn promise, that in public prayer they will use that form which is prescribed in the Liturgy, and none other. Every departure from it subjects them to prosecution and punishment. Yet forms of prayer or thanksgiving are circulated on various public occasions, and the clergy must either incur the appearance of being disloyal and lovers of singularity, or they must violate the law of the land and their own obligation. These forms do not even bear upon them that they come through the Bishop,* but are usually forwarded at once from

* This circumstance takes away the only ground on which the clergy can rest satisfied with their use, i. e. that they are sanctioned by their several Diocesans. Though even then their employment is open to the same remark, which has often been made respecting the four services commonly appended to the Prayer-Book, namely, that their use is contrary to the law of the Church as well as to that of the land.

The use of these services is contrary to the law of the Church as contained in the fourteenth Canon, which enjoins that the Common Prayer shall be used "without either diminishing or adding any thing." Now it is true that Services were set forth by Convocation for three of these oc-

the King's printer, and have no show of authority, save that of the Lords of the Council. But what authority have the Lords of the Council for altering

casions, but these Services have been materially altered at different times. So that Johnson says, "I cannot think it advisable to use forms not duly authorized, but rather so much of the old forms drawn in Convocation 1662, as may be consistent with the present state of things. These forms are in King Charles the Second's Common Prayer-Book, printed before the year 1685."

Nor are these Services authorized by the law of the land any more than by that of the Church. Respecting three of them Wheatly remarks, that though Acts of Parliament "appoint these several days to be solemnly observed, yet not one of them provides for or establishes any office for the use of either one or other of the said days: nor have our Kings, by whose order and directions alone these several offices are printed and annexed to the book of Common Prayer, any power by the Act of Uniformity to establish any other form than what is provided in the book of Common Prayer." —Illustration of the Common Prayer, p. 550.

The exercise of this right by the Crown seems to have been founded on a clause in the Act of Uniformity, 1 Eliz. 2. § 26., which gave that Queen power to alter ceremonies, by advice of the High Commission, or the Metropolitan. King James acted upon this authority in regard to the changes made at the Hampton Conference, in a manner "which would not have been in the least warranted by that proviso, had the powers there specified extended to the Queen's heirs and successors; but as they were lodged personally in the Queen, there could be no colour for King James's exercising them in virtue of it. The drawer up of the Commission," for the Convocation of 1603, "was aware of this, and supplies therefore what was wanting by a recourse to that inexhaustible source of power, the King's supreme authority and prerogative royal."—Atterbury's Rights of Convocation, 420.

This was a part of that dispensing power (any Act of Parliament, &c. non obstante) to which this King and some of his successors laid claim. But since the passing of the Act 1 William and Mary, by which it is expressly declared that "the pretended power of suspending of laws, or execution of laws by regal authority, without consent of Parliament, is illegal," (Tindal's Continuation, i. 56.) it is difficult to conceive on what grounds the statute of the 13th Charles II. c. 4., by which such innovations in the form of Prayer are distinctly forbidden, can be safely violated. The only ground alleged by Wheatly is the mutual connivance of all parties.

the Liturgy of the Church of England? There might be a danger lest this power, gaining ground from usage, should in time assert its pretensions, did not the express permission given to the Council to alter, from time to time, the names of the royal family, exclude all tacit right of interference; and if the resolution of a clergyman,* a century ago, in standing to his engagements, had not established a precedent for rejecting their authority.

These circumstances render it improbable that such violations of law will ever be construed into a right, but if this be not to be apprehended, is there no evil in allowing a law to be habitually broken? Is it no hardship upon the clergy to compel them to promise one thing and perform another? Yet is this but one of various inconveniences, to which for want of a Church Legislature they are continually subjected. It is often avowed, frequently perhaps with little reason, that the Church is not sufficiently adapted to the circumstances of the age. Yet it is impossible altogether to deny the charge, strange as it may appear, which has been made against her by one of the last and ablest foreign writers on ecclesiastical law. "Her system of jurisprudence," he says, "has been destitute unhappily of that reform-

* Vide "The case of occasional Days and Prayers, containing a defence for not solemnizing the Accession Day by reading the new form, and for not using occasional Prayers," by John Johnson, A.M., Vicar of Cranbrook.

Burnet remarks that a compliance of this kind embarrassed the clergy, when called upon to read James the Second's famous declaration: "Now it appeared what bad effects were likely to follow that officious motion for obliging the clergy to read the declaration that King Charles set out in the year 1681."—History of own Times, i. 736.

ing process, which the [Roman] Catholic Church has undergone through the instrumentality of the Council of Nice and of the *later provincial councils*.....and has therefore become gradually a lifeless mass."*

But must not the same have been the result with any society, which was debarred the opportunity of acting for itself, and obliged to call in the aid of a Legislature, too much immersed in general politics to regard it? Could any community be active, the vital powers whereof were thus held in abeyance? Could any concern be profitably conducted, when a great public body must give sanction to every step as trustees? Let the experiment be tried with the Wesleyan Methodists. Let them be compelled to obtain Parliamentary sanction for every change, however minute, in their system and arrangements. Let them be obliged to apply to Sir Robert Peel for the regulation of their class meetings, or to Mr. Joseph Hume for the order of their circuits. Would they be the same judicious accommodating people that we now find them?—as ready to take advantage of every opening, and make the most of every incident? Yet this is exactly the situation in which the Church of England has been placed for above a century.

If these reasons establish any case in behalf of the expediency of having a Church Legislature, the next question is, of what kind must that Legislature be?

* Walter's Lehrbuch des Kirchenrecht's, Pref. v.

Now in answer to this question, some will say at once that we have a Church Legislature already in the Imperial Parliament. This answer would of course preclude the necessity of further inquiry. And it cannot be denied that Parliament has full power to legislate for all subjects of the realm. Were such a change as has been suggested in the internal arrangements of the Wesleyan Methodists, to be enacted by King, Lords, and Commons, whatever were the feelings of their Conference, it would become the law of the land. But does this circumstance make Parliament a Wesleyan Legislature? Indeed Parliament does at present make rules, by which various religious persuasions are more or less affected. A licence to celebrate the religious office of uniting persons in matrimony is given, under certain conditions, to various Dissenting bodies by the State. This is to make enactments which affect their private arrangements. And we have lately seen an interference with the religious practices of several Indian sects, because inconsistent with the general laws of the English empire. These circumstances show that the *power* of legislating for the Church does not necessarily render Parliament a Church Legislature.

But tolerated sects, it will be said, are not analogous to an Established Church; what is contended is, that so long as the Church is *established*, Parliament has not only the power, but the right to legislate for her. Now this is so prevalent and so plausible an opinion, that its justice requires to be

fully considered. But those who adopt it may fairly be expected to state what is that circumstance or quality about an Establishment, which gives this peculiar right of interference to the Imperial Parliament. When it is said that the Lower House has the exclusive right of taxing the Commons of the land, we know what is that circumstance to which this power is referable, viz. that the Commons House has been deputed by the possessors of property. It is in like manner demanded what is that quality of an Established Church, which makes it fitting that her internal affairs should be regulated by Parliament. Unless this question is resolved, all reasoning will be lost in generalities; and the term "Established" will be employed with the same unfairness with which James the First is said to have used a word of like indeterminate signification, when he referred such acts as were unsupported by law, precedent, or principle, to the virtue of his *Prerogative Royal.*

Consider then some of those circumstances, which have already been noticed, as distinguishing the Established Church. The Sovereign must be a member of her Communion. Her Bishops are an estate of the realm. Her Churches have a legal claim to maintenance. Her Courts possess a certain measure of public authority. Nothing of course need be said of Endowments, which are possessed with equal security by various parties in the land. Now in what manner do these points, taken singly or collectively, establish any right of

peculiar interference with the internal management of the Church? If it be said that the religious condition imposed upon the possession of the Crown, and the right of the Bishops to vote in the Upper House, connect these two branches of the Legislature with the Established Church, then should it be to these alone that Legislation should be committed. As the Lower House has the sole regulation of taxes, because it represents the people, so would the Upper prescribe for the Church, were she truly represented there. Looking then to the Legislature at large, what direct title do these circumstances convey, such as is pleaded in any other case, or would be conceded by any other body? Two of them are found equally in the Scotch Establishment, which, though subject to the limiting power of the State, like every occupant of entailed property, is yet allowed to refer its internal arrangements to its own Assembly. And all four of them existed before the Reformation, during which legislative power over the Church was plainly in other hands, and no claim to it was asserted by Parliament. Now had there been such a natural and necessary connexion between these characteristic peculiarities of an "Establishment," and the right of Parliamentary Legislation, had the one by any inevitable sequence involved the other, it could hardly happen that at that great epoch when the ancient mode of legislation was materially changed, and many new provisions were introduced—an age fertile too in great minds, and

which has bequeathed to us so many masterly digests of our standard principles—this most important claim should be altogether unnoticed. Yet in which of our Formularies is it to be found? In the Articles are stated the rights "of the civil magistrates." Is there a word in them which implies, that because the Church is Established, therefore its internal arrangements should be regulated by Parliament? Is there a word on the subject from one end of the Prayer-Book to the other?

But it may suggest itself to some persons, that a declaration of this kind was dispensed with, because the acts of power superseded the necessity of its assertion. Parliament, it may be thought, showed its right to legislate for the Established Church by deeds and not by words; and the very fact of its abolishing that Papal power which had once existed, was a sufficient charter of its authority. What need is there to assert rights, which are practically admitted? And this, it may be added, is after all, the truest claim to power. That immemorial usage, which rests merely upon the prescription of centuries, is not only most safe from abuse, but is least obstructed by envy. On this basis stand the best Institutions of the country, and it is a sufficient argument for supposing that there is something in the notion of an Establishment, taken collectively, which justifies the interference of Parliament with the internal arrangements of the Church. Such seems to be the feeling

commonly entertained by those who advocate the opinion in question. But if it be tested by a reference to facts, it will be found utterly at variance with the evidence of History. For not only has Parliament never exercised by itself any such power, but it made public profession of its grounds for claiming that power which it did really exercise, and so far was it thereby from asserting or gaining any prescriptive right to legislate for the internal affairs of the Church, that its assertions are wholly inconsistent with any such present pretension.

Persons have perhaps been led to the opinion that Parliament has exercised this authority, from finding that the Book of Common Prayer is prescribed by its Act of Uniformity. Nor is it unnatural to conclude, that what is enjoined by Authority of Parliament stands upon no other basis. But observe in what manner this and similar Acts of Parliament are worded. Their general principle is recorded in the Preamble to that celebrated Act for Restraint of Appeals,* by which the usurped power of the Pope was abrogated. "Where by divers sundry and authentic histories and chronicles it is manifestly declared and expressed that this realm of England is an Empire, and so hath been accepted in the world, governed by one supreme head and king, having dignity and royal estate of the imperial crown of the same: unto whom a

* 24th Henry VIII. Cap. 12.

body politic, compact of all sorts and degrees of people, divided in terms and by names of Spiritualty and Temporalty, been bounden and owen to bear next to GOD, a natural and humble obedience: He being also institute and furnished by the goodness and sufferance of Almighty GOD with plenary, whole and entire power, pre-eminence, authority, prerogative and jurisdiction, to render and yield justice and final determination to all manner of folk, resiants or subjects within this his realm, in all causes, matters, debates and contentions happening to occur, insurge or begin, within the limits thereof, without restraint or provocation to any foreign princes or potentates of the world: the body spiritual whereof having power, when any cause of the law divine happened to come in question, or of spiritual learning, that it was declared interpreted and showed by that part of the said body politic called the Spiritualty, now being usually called the English Church, which always hath been reported and also found of that sort, that both for knowledge, integrity and sufficiency of number it hath been always thought, and is also at this hour, sufficient and meet of itself without the intermeddling of any exterior person or persons to declare and determine all such doubts, and to administer all such offices and duties, as to their rooms spiritual do appertain :—and the laws temporal for trial of property of lands and goods, and for the conservation of the people of this realm in unity and peace, without rapine and spoil, was, and yet is

administered, adjudged and executed by sundry judges and ministers of the other part of the said body politic, called the Temporalty : and both their authorities and jurisdictions do conjoin together in the due administration of justice, the one to help the other."

Now in this statement we have no assertion of any inherent right in the Temporalty to decide any thing, unless the advice of the Spiritualty was also had "when any cause of the law Divine or Spiritual learning happened to come in question." And this principle was adopted both in reference to the Act of Uniformity and to every other law, which affected the internal government of the Church. The Preface to the Prayer-book contains the principle on which that book had been derived, and shows that its compilers conceived it to have a claim of right, irrespective of the sanction which it might afterwards receive from the power of Parliament. "We have good hope," they say, "that what is here presented, and hath been by the Convocations of both Provinces with great diligence examined and approved, will be also well accepted and approved by all sober, peaceable and truly conscientious sons of the Church of England."

In strict accordance with this hope was the declaration of Parliament as contained in the Act of Uniformity. "Whereas in the 5th year of the late Queen Elizabeth, there was one uniform order of Common Prayer, and of the administration of Sacraments,—(agreeable to the Word of GOD, and

usage of the Primitive Church,) compiled by the reverend Bishops and Clergy,.....and whereas..... the Convocations of both the Provinces of Canterbury and York, being by his Majesty called and assembled and now sitting, his Majesty hath been pleased to authorize and require the President of the said Convocation, and others the Bishops and Clergy of the same, to review the said Book of Common Prayer, &c., and that after mature consideration they should make such additions and alterations as to them should seem meet, and should exhibit the same to his Majesty in writing for his further allowance or confirmation. Since which time, upon full and mature deliberation, they the said Presidents, Bishops, and Clergy of both Provinces, have accordingly reviewed the said Book, and have made some alterations, which they think fit to be inserted to the same, &c., and have presented the same unto his Majesty, in writing.....all which his Majesty having duly considered, hath fully approved and allowed the same, and recommended to this present Parliament that the said Book of Common Prayer, &c., be the Book which shall be appointed to be read.....under such sanctions and penalties as the Houses of Parliament shall think fit.

Now in regard that nothing conduceth more to the settling of the peace of this nation (which is desired of all good men) nor to the honour of our religion, and the propagation thereof, than an universal agreement in the public worship of Almighty GOD ; and to the intent that every person within

this realm may certainly know the rule to which he is to conform in public worship," &c.—then follows an order for the use of the Book of Common Prayer.

In this act there is surely no assertion that Parliament, without the concurrence of the Spiritualty in their Convocation, has any right to legislate for the Church's internal government. That Parliament should by "sanction and penalty," enjoin that which Convocation had recommended, no more gives it a right by itself to rescind what had been agreed upon by their joint authority, than the penalty of death annexed by it to a breach of the sixth Commandment gives it a right to abrogate the law of GOD. If such right exists, it cannot be based at all events on this tacit prescription. Those who build merely upon the fact of usage, must have some less equivocal usage to produce. And to omit a few unimportant matters of late occurrence, it will not be found that Parliament, at least till the last few years, has even professed to exercise any such powers. Those which are really questions of spiritual authority, the right of excommunication, the validity of orders, the form of worship, the establishment of doctrine,—these have never been touched save by that compound body of the Spiritualty and Temporalty, to which the statute for Restraint of Appeals refers. There is no ground of precedent therefore for supposing that they may be altered, save by that which Hooker describes as "the very essence of all government

within this kingdom—the body of the whole realm,"—namely, "the Parliament of England, together with the Convocation annexed thereunto."*

But not only is there no foundation in precedent for supposing that because the Church is established, therefore has Parliament, by itself, a right to regulate its internal affairs; but the very reasons anciently adduced for Parliamentary interference are destructive in themselves of this modern pretension.

Parliament was absolutely called upon to state its right of legislation, when, in conjunction with Convocation, it protested against Papal usurpation, and stated which of the existing laws and customs should hereafter be received. And it made its assertion in the following words: "Where this, your Grace's realm, recognizing no superior under GOD, but only your Grace, hath been and is free from subjection to any man's laws, but only to such as have been devised, made, and obtained within this realm for the wealth of the same; or to such other as by sufferance of your Grace and your Progenitors, the people of this your realm, have taken at their liberty by their own consent to be used amongst them; and have bound themselves by long use and custom to the observance of the same, not as to the observance of the laws of any foreign prince, potentate, or prelate, but as the customed and ancient laws of this realm, originally

* Eccl. Polity, viii. vi. § 11.

established as laws of the same, by the said sufferance, consent, and custom, and none otherwise."*

And in the same year was an Act passed, which provided "that no canons, constitutions, or ordinance, shall be made or put in execution within this realm by authority of the Convocation of the clergy, which shall be contrariant or repugnant to the King's prerogative royal, or the customs, laws, or statutes of this realm."†

Here then we have the ground of that claim which was made by Parliament to a certain interference in the Church's laws. To the notion that because the Church was Established, therefore its internal government must be in the hands of the Legislature, there is not the slightest reference—indeed it is negatived by the nature of that restriction which is imposed upon Convocation. The principle involved is of a more plain and definite nature. How it is to be accommodated to the maxims of Christ's Church it is needless in this place to consider, but at all events it is sufficiently consistent with the hereditary notions of British liberty. What is asserted is, that in religious as in civil matters, the people of England are not subject save to their own laws. There is challenged for them a certain inalienable privilege to be conversant with the enactment of those rules, which they are subsequently to obey. This assertion is not incompatible with a belief in certain antecedent max-

* 25th Henry VIII. § 21. † 25th Henry VIII. § 19.

ims of right, whether derived from morals or revelation, whether affecting civil laws or Church principles, from which the compulsory statutes of the realm are not at liberty to diverge. One of these may be the judgment passed by the early Church, on the authority of GOD'S word, respecting the right of controul inherent in the order of Bishops. It is of the human enforcement only of such rights that Parliament is treating. And its opinion on this subject is explained by the great expositor of the Church's constitution, in words the authenticity whereof seems to be attested by their accordance with his general sentiments. "In all societies, companies, and corporations, what severally each shall be bound unto, it must be with all their assents ratified. Against all equity it were that a man should suffer detriment *at the hands of men*, for not observing that, which he never did, either by himself or by others, mediately or immediately, agree unto."*

The interference of Parliament then is not rested on any peculiar quality of Established Churches, but on the clear and intelligible ground of the people's rights. It is part of that system which is involved in the words already quoted, that no "man is a member of the commonwealth, who is not also of the Church of England." It followed naturally from the arrangements of a period in which the whole nation was compelled to be of one

* Eccl. Pol. viii. 6. § 8.

faith. It was part of a compulsory system, and endured as long as that system prevailed. Were the churchwardens of every parish chosen by such rate payers as were communicants, did they vote for deputies who should represent the lay members of the Church, and did every parish bind itself by indenture to submit to such representatives, we should then have an assembly answering to the House of Commons, at the time when Parliament, together with Convocation, was a Church Legislature. Such a plan is not mentioned as though it were thought expedient—far otherwise; but as showing how little Parliament, as at present constituted, can lay claim to such a title. For not only was it never claimed by Parliament, save when united to Convocation, but the very ground on which in that case it was asserted, has passed away. Since Parliament has ceased to consist of or be elected exclusively by Churchmen, it cannot profess to be the representative of the lay members of the Church. Of those who constitute any particular assemblage of its members, not one need be included in her ranks. To assert therefore that it ought to legislate for her internal interests, is to act in direct contrariety to that very maxim, upon which was grounded its former interference. It is to sanction the principle of persecution, of which the cardinal point seems to be, that one set of persons undertake without authority, to make laws for the religious interests of another. "Equals," says Hooker's again, "cannot impose laws or statutes upon their equals.

Therefore neither may any one man indifferently impose canons ecclesiastical upon another, nor yet one Church upon another. If they go about at any time to do it, they must either show some commission sufficient for their warrant, or else be justly condemned of presumption in the sight both of GOD and man."*

Parliament then, as at present constituted, is not only no Church Legislature in itself, but it is destitute of that very characteristic, which rendered it in times past an inherent part of such a Legislature. Its present acts therefore for the Church can only be acts of arbitrary power. They may be salutary, judicious, and temperate, they have no doubt the compulsory force of penal enactments, but they are without that condition, so essential to all confidence, of being enacted by the Church for her own controul. However prompt the obedience which they may receive, while not contrary to the law of GOD, they will not cease to be considered unconstitutional and oppressive. So that Parliamentary interference will have to be grounded not on its abstract right, but on its actual advantages. But is there any thing in the manner in which Church questions are commonly discussed in the Legislature, which can compensate for a departure from the maxims of ancient law and the principles of British justice? Is it not notorious that the reception often given to such matters, has convinced those who

* Eccl. Pol. viii. 6. § 1.

judge only by the rule of apparent effect, that the less a Church Legislature is dependent upon the House of Commons, the better? In all temporal matters, no assembly can be more fair and sagacious than a British House of Commons; but with spiritual questions its very nature disqualifies it to deal. Such questions are seldom introduced, without the occurrence of scenes which must give pain to well-disposed minds. Even in the last generation, when this assembly consisted in larger measure of churchmen, one of the Church's most zealous and devout sons was unwilling to bring before it various matters of national importance, because, while it was dubious whether the cause of religion would profit by his attempts, it was certain that it would suffer by the profaneness with which they would be combated.*

The Church Legislature then ought to be something distinct from the Imperial Parliament. But supposing, which is sufficiently unlikely, that Parliament could be induced to make over its legislative power to the bench of Bishops, would this be more satisfactory? The possibility of its committing this power to any other persons, as, for example, parties selected by royal commission, need hardly be thought of, since it is an expedient with which no

* An honourable exception must be made in reference to a late debate on Lord Ellenborough's Proclamation respecting the Gates of Somnauth. Even here however it was observable how much more alive were the majority of speakers to the religious prejudices of the Mahometans of India, than to those of the Christians of Britain.

one would be contented, having no basis in the theory of Episcopal authority, and being contrary to the acknowledged principles of the British constitution. But the delegation of this power to the Episcopal order would obviate that irreverence so much to be feared from a mixed assembly of churchmen and separatists, while the clergy would doubtless submit with due respect to whatever emanated from such a quarter. But it cannot be concealed that such a measure would not be altogether accordant to the precedents of early times, while it would involve various practical difficulties. General councils of old decided things indeed by the judgment of Bishops; and the judgment of Bishops so assembled no churchman probably would dispute. But on such occasions the Bishops of different countries were united, so that the rulers of each Church profited by the hereditary testimony which was borne to the great truths of the gospel by every other. The Bishop also at that time was a sort of representative, in whom the wishes and feelings of the lower clergy, as well as of the laity, were embodied. If in general councils the Bishop attended alone, he had previously met his clergy in provincial ones, and the principles which he adduced at the former had been canvassed at the latter. Besides both clergy and laity had a share in the selection of the person, on whom his brother Bishops were to bestow the Apostolic office.

These circumstances show that whatever may be said in favour of such a measure, it cannot at all

events be rested upon the regulations of the ancient Church. Were the Statutes of Præmunire either repealed or modified, so that the appointment of Bishops was subject to controul by any Church authority—were the salutary custom revived of securing the co-operation of the inferior clergy by previous consultation—such a course might then be defended by its analogy to the usage of earlier days. At present the measure must be canvassed with a view principally to its practical effect.

Suppose that such a step had been taken at the commencement of the last century. A further change in the Prayer-Book is known to have been in agitation, which it is impossible to contemplate without great apprehension. And from the avowed sentiments of Burnet, (certainly not the worst man in the party which had the ascendancy,) subscription to our ancient formularies would probably have been abandoned. This measure Bishop Burnet prided himself in having been the means of bringing about at Geneva,* and the ascendancy of Socinian principles is the acknowledged result of his efforts. That similar results would have followed if the party of Bishop Hoadley had ever possessed itself of legislative power, is sufficiently obvious from the sentiments of what was called "the Feathers' Tavern Petition." With this precedent before us, is it likely that the great body of the lay members of the Church, would acquiesce in committing

* Burnet's Life and Times, 2. 693.

to any body of persons an absolute power of legislature which they do not at present possess? What may be the abstract right of the Episcopal order is not here discussed, nor is the compulsory power of Parliament disputed; but no great change is likely to be made, until both *right* and *power* are combined in the same parties. So that, as matters stand at present, if Parliament would delegate its power, which can hardly be expected, the acquiescence of the great mass of churchmen might not be secured.

And if this be so, there is little prospect of seeing any Church Assembly endowed with a plenary power of Legislation. The Church's laws must continue to resemble the principles of the Spartan Constitution, and be incapable of change, unless under a contingency as unlikely as that the spirit of Lycurgus should re-animate his lifeless clay. For as Sparta had pledged herself to admit no alteration till the return of her great Lawgiver, so can the Church desire none, while the Legislative power is in the hands of other than her own representatives. Nor is this inflexibility in her fundamental laws so much to be regretted. A power of adaptation in matters of detail is consistent with the most unalterable stability of principles. The boughs may have room to extend, and the leaves to unfold themselves, while the roots only strike deeper in the parent soil. This was the very principle of those ancient states in which the fluctuations of human opinion were restrained within cer-

tain sacred limits, yet were allowed freedom enough to prevent stagnation. The British constitution, indeed, confiding in the fixed habits of our leaders, leaves its Parliament absolutely unfettered; but our more jealous kinsmen in America intrust their Congress with no such discretionary power. The fundamental laws of the United States cannot be altered without a reference to the people at large; and the acts of Congress therefore are subject to be disallowed by the Courts of Justice. Now is there no assembly, which while it is limited in like manner by the established laws of the Church, might within those limits exercise a partial authority? Because the Church can have no plenary legislature, such as Sparta renounced, and such as America does not commonly employ, can she therefore have no authorized organ, and combined existence? On the contrary, she actually possesses such an organ, limited indeed both in nature and power, but within its limits perfectly capable of action, namely, the Convocation of the Bishops and Clergy of the Church of England.

Convocation, it is true, could not by itself make rules which could be enforced upon the laity. This question is set at rest by Lord Hardwicke's decision.* Nor could it alter any of those laws, which Parliament, and the Convocation annexed to it, have enacted. With the Book of Common Prayer therefore and with the Articles it could not inter-

* Preface to Burn's Eccl. Law, xxxi.

fere. Indeed it may be doubted whether without some further sanction, (which however might probably be obtained) it could even authorize the use of such forms of Prayer, as occasional circumstances render it desirable to introduce. But it would be able to pass canons for the direction of the clergy, which, when not contrary to Acts of Parliament, might be carried into effect by the Ecclesiastical Courts of the realm. Such canons, when ratified by the Sovereign, would not only be binding upon the consciences of the clergy, but might be enforced upon them as laws. It might in like manner exonerate them from such an use of the funeral service, as was never intended by its original compilers. For this necessity depends upon a canon alone.* It would thus be able to introduce such a measure of discipline as is dependent upon the acts of the clergy; while its superintendence would obviate partial and inconsiderate attempts, and give efficacy to consistent and salutary reforms. It could devise remedies for many difficulties at present experienced, and originate plans of various and extensive usefulness. The Church would thus

* Convocation could only release the clergy from such *canonical* obligations as are contrary to the intentions of the Church. The right of every Parishioner to a grave in the church-yard, but without any religious service, would remain such as it is according to the Common Law. In the case of Rex v. Taylor, "the clergyman had allowed the body to be taken into the church-yard, and had permitted a grave to be dug there," and the Court held "that they could only order the interment of the body, the performance of ecclesiastical rites being left to the ordinary."—Mastin v. Escott, p. 177.

have an organ, which, if not chosen by its whole body, might yet speak in its name.

And such an organ is the more called for at present, because the restless spirit of the times, together with the absolute necessity of certain alterations, may otherwise commit the Church to changes in which she will have no voice, and which she will regard perhaps with no satisfaction. When storms assail and breakers threaten, it cannot be needless to stand by the helm, and see that the sails are adjusted. If at such a moment the vessel is abandoned by its own crew, and pronounced to be unmanageable, no wonder that others assume a right to direct its course. Now of this nature is the Church's present crisis. She has much to hope, and yet it is impossible to deny that she has much to fear. She is no longer, as in the last century, becalmed in the midst of the ocean: new objects and fresh emergencies are every hour arising, fraught indeed with danger, but indicating more certainly the proximity of the haven. To whom then shall she commit her helm: to her own children or to strangers? Are her measures to be canvassed with that deep and serious consideration, which may be expected from those who think her interests the most important of earthly considerations, or are they to be jumbled up with Tariffs and Railroad bills, in an assembly the time whereof is already fully occupied, and where subjects are afloat, which to the Laity at large possess more immediate interest? The question at present, as

an eminent Prelate has of late observed, is not between rest and change; but between changes with the Church's consent and without it; between the *right* of Convocation and the *power* of Parliament.* For while Parliament is confessed to have the *power* of legislating for the Church, Convocation within its proper limits, has both the power and the *right*. Its power is plainly recognized by the statute which restrains the clergy from making canons "by authority of the Convocation," which shall be contrary to the customs of the realm.† It is still more plainly recognized by the Royal Declaration prefixed to the Articles, which promises license to Convocation, in order "that the Churchmen may do the work, which is proper unto them." Its revival therefore would not, like any new expedient, endanger the ancient harmony between Church and State, because it is already a part of our constitution, "as by law established." And so far as the clergy are concerned, it has that very claim of right on which the interference of Parliament in times past was rested. It is the authorized expositor of their sentiments, because by representation‡ it is themselves. It is capable

* Charge of the Bishop of Salisbury, for 1842.

† 25 Henry VIII. § 19.

‡ Convocation appears to combine every claim to be a body representative of the Clergy, having been formed from the union of two kinds of assemblies, one called by the Archbishops as Provincial Synods, the other summoned by the Bishops in consequence of a writ from the Crown, for the purpose of taxing the Clergy. The difference between these two assemblies, and the manner in which they were united, is thus stated by Heylin, at a time when the subject had not yet become matter of controversy:—

of vindication therefore according to that jealous vigilance, which demands that every institution which is introduced among us, should be accordant with the free principles of the Saxon race. To all which must be added, that it alone will satisfy those who take the higher line of Church authority, inasmuch as it forms the only means by which the voice of the Church's spiritual governors can be pronounced. To this view they are positively

" In calling Parliaments the King directs his writs or letters severally to the Peers and Prelates, requiring them to attend in Parliament, to be holden by the advice of his Privy Council, at a certain time and place appointed, and there to give their counsel in some great and weighty affairs, touching himself, the safety of the realm, and the defence of the Church of England: a clause being added in all those to the several Bishops, to give notice to all Deans and Archdeacons to attend the Parliament in their own persons, all Chapters by one proxy, and the Diocesan Clergy by two; for yielding their counsel and obedience to such laws and ordinances as by the Common Council of the kingdom shall then be enacted: which clause remains still in those letters, though not still in practice. Writs are sent out also to the several Sheriffs, acquainting them with his Majesty's purpose of consulting in a Parliamentary way with the Peers, and Prelates, and other great men of the realm, (the Judges and Officers of State, &c.) and requiring them to cause two knights to be elected for every county, two citizens for every city, &c. All of these to attend in Parliament at the time appointed: no otherwise empowered than the Dean, Archdeacons, and the rest of the Clergy by their formal writs. But in the calling of a Convocation the form is otherwise: for in this case the King directs his writs to the two Archbishops, requiring them for the great and weighty reasons above mentioned, to cause a Convocation of the Clergy to be forthwith called, leaving the nomination of the time and place to their discretion; though for the ease of the Bishops and Clergy, commanded to attend in Parliament, as before was said, the Archbishop used to nominate such time and place, as might suit with that attendance. On the receiving of which writ, the Archbishop of Canterbury sent his mandate to the Bishop of London, as Dean of the Episcopal College, requiring him to cite and summon all the Bishops, Deans, Archdeacons, and Capitular bodies, with the whole Clergy of the province, according to the usual form, to ap-

pledged by the decision of the Bishops and Clergy of a past age, who have actually denounced the penalty of excommunication upon those, who shall deny that the sacred synod of this land is "the Church of England by representation."* Moreover it has a strong claim upon that very different, but scarcely less numerous class of persons, who, without troubling themselves about principles, are

pear before him at such place and time as he therein nominated, and that the Procurators for the Chapter and Clergy be furnished with sufficient powers by those that sent them, not only to treat upon such points as should be propounded for the peace of the Church, and defence of the realm of England, and to give their counsel in the same, but also to consent, both in their own names, and in the names of them that sent them, unto all such things as by mature deliberation and counsel should be there advanced. Which mandate being received by the Bishop of London, he sends out his citations to the several Bishops of that province, and they give intimation of it to the clergy of their different Dioceses; according whereunto the Chapters and Parochial clergy elect their Clerks, binding themselves under the forfeiture of all their goods, to stand to and perform whatsoever the said Clerks shall say or do in their behalf.

"Both bodies being thus assembled, are to continue their attendance on the public service during the pleasure of the King; the acts of both to be invalid till confirmed by his Majesty, the one most commonly by himself, sitting upon his royal throne in open Parliament, the other always by letters patent under the Great Seal; neither of the two to be dissolved but by several writs, that for the Parliament directed to the Lord Chancellor or Lord Keeper, (as the case may be) that for the Convocation issued out to the Metropolitans of the several provinces. In this, and this alone, they differ as to matter of form, that the Peers and people assembled in Parliament may treat, debate, and conclude of any thing which is tendered to the King for his royal assent, without any other power than the first writ, by virtue whereof they are assembled. But the Bishops and Clergy are restrained in their Convocation by the Statute of the 25th Henry VIII., from treating, debating, framing and concluding of any Canons and Constitutions, or doing any Ecclesiastical acts, tending to the determination of controversies or decreeing ceremonies, till they are licensed thereunto by the King's Commission."—Life of Laud, p. 421.

* Canon 139.

anxious only for something, which can be brought to bear at once, and will lead to direct practical improvements. For this purpose, what more suitable than Convocation? Its revival needs no law, and involves no disputed principles; it is already in existence, and might act immediately supposing only that the Queen's licence was solicited and obtained. Now with these arguments in its favour, why is it that Convocation, which for successive centuries was the safe and natural medium for ecclesiastical reforms, by which all matters of Church discipline were uniformly decided, should be viewed with so much distrust? Is it reasonable, that the collisions of a short period of political disunion should be allowed to outweigh the benefits of seven hundred years of peaceful and salutary action?

The nature of these collisions it is essential to notice, inasmuch as they form the real ground of that suspicion, with which the renewal of synodical action is regarded by wise and good men.

They had their root in the deprivation of a body of learned, zealous, and respected clergymen, whose consciences forbade them to take oaths to King William III., which they judged contrary to those taken to his predecessors. Whether their decision was right or wrong, it is needless to inquire: but considering that many of them had incurred the displeasure of James by opposing what was illegal in his measures, it is impossible not to respect their conduct in sacrificing their worldly prospects to their feeling of the sanctity of an oath. The natu-

ral leaders then of the Church were suddenly withdrawn, and among its younger and less tried members were to be found the directors of its future course. Every ten thousand may in such circumstances contain its Xenophon, but the moment was doubtless critical, and no wonder if the clergy were disinclined for new and hazardous attempts. Of the twenty-six Prelates of the Church of England, nearly half had been removed, eight for not taking the oaths, and four others by death.* The main charge against the lower House of Convocation is, that at this moment it refused to concur in a sudden alteration of the Liturgy and Discipline of the Church. The other complaints against it arose in fact out of this, for this created the suspicion and hostility to which the subsequent dissensions are to be attributed. Now had the change been an unquestionable improvement, we may pardon those who at such a moment were indisposed to make it. But when we find that for the time-honoured petitions of our ancient ritual, were to be substituted "new collects for the whole course of the year," in which "Dr. Tillotson had the last hand, giving them some free and masterly strokes of his easy and flowing eloquence," that "the chaunting of divine service in Cathedral Churches" was to be "laid

* Seth Ward, Bishop of Salisbury, ob. Jan. 6, 1688. Humphrey Lloyd, Bishop of Bangor, ob. Jan. 18, 1688. Thomas Cartwright, Bishop of Chester, ob. April 15, 1689. The See of Exeter was already vacant by the translation of Lamplugh to York, which had not been filled since the death of Dolben, in 1686.

aside," that such points as episcopal ordination, the use of sponsors, the practice of kneeling at the Holy Communion, and the Athanasian Creed, though not abandoned,* were yet not to be insisted upon, we can hardly wonder at the disinclination of the lower House to entertain the question of alteration. Few churchmen probably of modern days, will fail to agree with Bishop Burnet, a main abettor of these alterations, in thinking that their defeat was "a very happy direction of the providence of GOD."† And if this was admitted within a few years, even by the most busy advocate of such innovations, what just ground could such conduct supply either for regarding convocations in general with alarm, or for subjecting this to the especial displeasure of the government? Such however was the result. "Seeing they were in no disposition to enter upon business," says Burnet, "they were kept from doing mischief by prorogations for a course of ten years."‡

With the natural irritation which such a state of things engendered, did Convocation meet again ten years afterwards. The very persons who were resenting the unjust censure which had been passed upon them, were suddenly presented with an op-

* Rapin's History of England, vol. iii. b. 25. p. 108. As a further indication of the judgment of those, who proposed to remodel what our Reformers had thought most worthy of regard amidst the records of antiquity, may be mentioned their determination that "the prayer which begins, *O God, whose nature and property*, shall be thrown out, as full of strange and impertinent expressions."

† History of own Times, vol. ii. p. 33. ‡ Burnet, 2. 33.

portunity of re-asserting their innocence and their rights. If they did not do so with all the temper which could be desired, yet at all events they were not guilty of any such heinous excesses as the Long Parliament, when it recovered itself after similar suspension. If the acts of the one are no good argument against Parliaments, neither are those of the other against Convocations. Nor were their acts at worst any thing more than was natural, after the deprivation of the nonjuring Bishops had destroyed for a time the natural intercourse between the rulers of the Church, and those they governed. For it cannot be too much insisted upon, that Episcopal government is not of the nature of those ancient tyrannies, in which the subjugation of a vanquished people left nothing but a master on one side and slaves on the other. Rather is it the perfection of that paternal government, which attended the original developement of the human race, in which affection and consanguinity was felt as vividly in the highest as in the lowest bosom, and every inferior conceived himself to have a natural representative in the person of his chief. The inherent influence of the family relations, and the equity of an unwritten law, are the natural check on such a government; and they would have been sufficient in any ordinary times to have saved the Church from collisions so disastrous. But could this influence be reckoned upon when men were excited by injustice and suspicion, while loyalty and obedience spoke with a divided

voice? Nor is it a slight disadvantage that the Convocation of that day has the misfortune to be principally known through the writings of Burnet, a man of zeal and talents, who has repaid the illiberality at that time shown to his nation and his politics, by a deep-rooted hatred, which, whenever the clergy of the Church of England are in question, he never fails to express.

It must be borne in mind also, that these disputes were not, after all, the cause which led to the suspension of synodical action. They had in a considerable degree subsided; Atterbury, who had borne a main part in inflaming them, had been removed to the Episcopal Bench; and the authority of the Archbishop had been asserted and obeyed. It was not till the political interests of the ruling party required the preservation of Hoadley from the censure to which he was justly liable, that the voice of the Church was finally stifled. The violence of the ruling party may be estimated, when it was thought justifiable to expunge the honoured name of Sherlock from the list of the King's Chaplains, because he took part against this political divine, whom one of the most distinguished Prelates of the present day (the Bishop of London) has not scrupled to designate as a Socinian. Whatever therefore may have been the temporary faults of convocation, it was not any strange or unreasonable proceeding which occasioned the final suspension of its powers.

And if the conduct of the Lower House of Con-

vocation be allowed to have been open to some exception, it should not be forgotten that the period during which its sessions were permitted, was a time of active zeal, which altogether slept so soon as they were suspended. Bishop Gibson bestows especial praise upon the pains which Convocation had taken at this very period, for the purpose of correcting the evils of the Ecclesiastical Courts, and asserts it to have already made progress in this important task.* One of the most material parts of the improvement effected in 1813, had been already recommended by it, and would have been attained a century sooner, if the King's sanction had not been withdrawn.† The Report of the Society for the Propagation of the Gospel, at the same period—A. D. 1712, and A. D. 1713—states that a representation had been made during the preceding year to the Queen, respecting the importance of settling four Bishops in the American Colonies, that she had returned a favourable answer, and ordered the draught of a Bill to be prepared for the consideration of Parliament; and so certain was the promise of success, that the Society actually purchased a house at Burlington, for a Bishop's residence.‡ The simple inspection of Nelson's Advice to Persons of Quality will show what was at that time the spirit of the Church. Nor were these efforts uninteresting to those who in other respects

* Preface to Charges, p. ix. † Gibson's Codex, 2. 1059.
‡ Sermons before the Society for Prop. of the Gospel, p. 27, 60, &c.

were the moving spirits of the age. The Commission for building fifty new Churches in and near London, the last great effort in this cause, till attention was called to it in recent days, contains, amidst its leading clerical members, those who are principally objected to for their connexion with Convocation. Atterbury, indeed, is said to have suggested the design. And let the state of things during the following reigns be considered. Was it a wholesome change which was introduced by Walpole, when he made the preferment of the Crown a mere instrument of temporal corruption? This, it is to be observed, was a new scheme, not more contrary to the laws of the Church than to the practice of the government. In King William's days, a Commission of Bishops, it is well known, was appointed to recommend the fittest persons for all government preferment. In Queen Anne's reign, the course was the same which had been followed from time immemorial—the Crown was advised by responsible ecclesiastical councillors, and was expected to be as free from mercenary motives as any other patron. How the practice introduced by Walpole, of bartering Church preferment for Parliamentary support, can be exempted from the guilt of simony, it is difficult to conceive. On this painful part of our history it is sufficient to say, that the evil never could have reached the height it did, had there been a Church Legislature, authorized to represent to the Sovereign the misconduct of his officers. But it was essential for Walpole to

prevent the clergy from assembling, when he found that with all the patronage of the Crown he was unable to bribe them to silence. A system, therefore, which had not been adopted since the time of William II. (except during the ten years of William III.) was again introduced into our history. During the reign of William Rufus, synodical meetings of the clergy were suspended, lest they should remind the King that Bishoprics were kept vacant, and their revenues appropriated to his own use. From the year 1717, when the last discussions took place in Convocation, there would have been equal ground to dread an inquiry into the principles upon which public preferment was administered. A better system, happily, has now been adopted. And the destruction of Borough patronage, by the Reform Bill, has withdrawn the temptation to the former abuses. What cause is there then why government should entertain any fear of what was formerly not unreasonably to be apprehended? Especially since one common feeling of loyalty has taken place of that political division, by which the mal-practices of the last age are in some measure palliated.

The ground of alarm is the less, because the constitution of Convocation cannot surely be considered to be unreasonably democratic. It cannot assemble without the sovereign's writ. When assembled, it cannot act without the sovereign's concurrence. The Archbishop's power of suspending it is a further safeguard. Again, it is in a great

measure composed of those who are appointed by the Bishops. "The Lower House" in the province of Canterbury, to quote from an account which, though old, is not inaccurate, "consists in all of one hundred and sixty-six persons; viz. twenty-two Deans, twenty-four Prebendaries, fifty-four Archdeacons, and forty-four Clerks, representing the Diocesan Clergy."*

Now although this body may have been at variance with the Upper House, when so sudden a change had been undergone by the Episcopal Order, yet there can be no natural reason for such dissensions. It is guarded against by individual attachment, as well as by public principle. And this is, after all, the great evil against which it is necessary to guard, both because it is the only rock which has hitherto been found fatal, and because it is most opposed to those principles of duty by which the clergy ought to be directed.

But another apprehension is not unlikely to suggest itself: the fear of violent dissensions among individual members of the inferior body. The present age, like every other, has its party questions, which are not agitated in a more dispassionate and Christian spirit than during times past. Would not these questions induce ferment and agi-

* Chamberlain's State of England. There seems no reason, in point of principle, why the Assemblies of the two Provinces should not be summoned together, as appears to have been the case when they were assembled by the Archbishop of Canterbury's legatine authority. In later times, the Prelates of the Northern Provinces often sat with their southern brethren.—Vide Lathbury's Hist. of Convoc. p. 132, 244.

tation? This fear is sometimes grounded on the judgment of an ancient Father, respecting ecclesiastical assemblies;—a judgment however of which the universal application may be more safely disputed, because it referred to meetings of Bishops, not of the inferior clergy, and the Anglican Bishops have been long used to meet together without such lamentable results.

It may be doubted also whether the agitated state of the public mind is not as strong an argument for the revival of Convocation, as for continuing its suspension. For is the Church quiet at present? Is not the land split into cabals, which are assailing one another? Are there not newspapers and periodicals, which exist by keeping the heat of different religious parties at the point of incipient combustion? Now it is an established rule in politics, that such peccant humours must either be suppressed by authority, or be allowed to evaporate by some natural vent. Why is the People's Charter safely despised, but because we have the Bill of Rights? What renders the meeting of Delegates unimportant, but the yearly session of the House of Commons? Might not something of this kind be expected, if the Church had some authorized mode of expressing its sentiments? At present every party and every writer professes to speak for the Church of England. One man quotes it for this or that ceremony: another asserts it to disapprove of all. What remedy is there against such assertions, however wild and groundless, while the

Church's deliberative powers are in abeyance? The most stirring, active, and noisy, are alone heard. Nothing is less designed than to speak with disrespect of the able and learned men, who have taken part in the controversies of the day, but the great mass of the clergy, who are occupied in the quiet discharge of their own duties, and desire to know no party but the party of the Church, might well address the clamorous disturbers of their peace in the words which the immortal Burke employed respecting certain political alarmists. "Because half a dozen grasshoppers under a fern make the field ring with their importunate chink, whilst thousands of great cattle, reposed beneath the shadow of the British oak, chew the cud and are silent, pray do not imagine, that those who make the noise are the only inhabitants of the field; that of course they are many in number, and that, after all, they are other than the little shrivelled, meagre, hopping, though loud and troublesome, insects of the hour."

The great mass of the clergy then will be found to look neither to Rome nor Geneva, their desire being only to hand on that system which the wisdom of past ages has embodied in the Prayer-Book. They will not contract those limits which their fathers erected, much less will they demolish them. They can tolerate such Calvinists as can reconcile themselves to the Baptismal service, and such admirers of the Mediæval Church as can subscribe the Articles. They think that they have cause to

bless GOD for the Church which they have received from their fathers, and desire only that they may not deserve their children's curse for its overthrow. "Spartam nactus es, hanc orna," is their motto.

Now if such be, as the writer hopes and believes, the feeling of a vast majority of the clergy, would there be danger in giving them such opportunity of deliberation as should draw off attention from the self-constituted assemblies of the day? Let men ask themselves whether in any Diocese with which they are acquainted, the more temperate and moderate persons would not in general command the confidence of the clergy. Such then would be the representatives whom they would send to Convocation. And what would result from such men's deliberations? Their debates need not be public. Their resolutions only would be before the world. And these would be a rallying point to the more moderate party, and would attract attention to practical reforms. And while men are in danger of being more widely separated by abstract discussions, they are by nothing more drawn together than by labouring in concert for some practical result. Let some civil improvement, the consolidation, for instance, of the criminal code, be in question, and the leaders of conflicting parties are found side by side in its support. Those who suspect one another are thus brought into concert, and many a long-cherished prejudice is dissolved in the warmth of a kindred pursuit.

To these general grounds for looking without

apprehension on the meeting of Convocation, must be added the fact, that during a most stormy period of our history, no such evil was found to be its result. This was not the charge under which Convocation formerly laboured. No more serious question can at present be agitated, than those which vexed the close of the sixteenth century, ere yet the ferment of the Reformation had subsided. The assaults then made also were against matters of practice, on which any term of union is more difficult to devise. At present those who show least desire to use the Prayer-Book, agree at all events to applaud it. What ground is there for fearing a danger, which even at that period was not found to follow?

There does not seem then to be any reason why churchmen should look with peculiar apprehension on the resumption of the Church's synodical powers. The difficulty felt by many minds will be only that the State will not choose to permit it. No minister of the crown, it will be said, would advise a step which would give such an increase of power to the Church. But the state of public affairs is every day reading new lessons to public men, and a few years will undoubtedly demonstrate, that if the blessings of our present happy constitution are to continue, it can only be through the instrumentality of our national Church. The last year has witnessed the boiling up of a spirit in our more peopled districts, which no other influence can permanently allay. If Walpole therefore found

it necessary to weaken the Church, because the government of George I. could not stand against its opposition, the Ministers of Queen Victoria may find it no less needful to strengthen it, now that government cannot endure without its support.

Political grounds then might lead a Statesman of his own accord to restore that synodical action, which on political grounds was intermitted. But what minister would incur the responsibility of advising her Majesty to refuse such a permission, if the clergy of every Diocese in England were to request it. It may be said indeed, that so decided a step as this would be inconsistent with the tranquil and retiring habits, which their situation and character combine to produce. And no doubt they will keep aloof, as they ever have done, from the agitation of the day. But there are limits to this love of peace: and they would surely be aroused to a calm and temperate expression of their wishes, should they see any wholesale and hazardous changes imposed on the Church without right, while she is denied the power to effect for herself the most necessary reforms. In such a case their past silence would add efficacy to their subsequent complaints. And who is there to interfere between the clergy and the goodness of the crown? This is not a question in which separatists are interested, for we neither seek to obtain for ourselves, nor to debar them, from power or possessions. We seek only that liberty which they all possess, of devising measures for our internal government.

And have we not a positive declaration, from the same hand which signed the Bill of Rights, that such a request shall not be made ineffectually? May we not claim it therefore with the same confidence, with which any of the civil liberties of the subject are asserted? Surely no minister would advise the Crown to falsify the royal word to an attached and obedient class of the community. For as the submission of the clergy binds them "not to attempt," as well as not to put in force any Canons or Constitutions without the Queen's sanction, so doubtless would her Majesty not be found wanting to that promise of her predecessor, which still continues to appear in the book of Common Prayer.

"*That out of our Princely care that the Churchmen may do the work that is proper unto them, the Bishops and Clergy, from time to time in convocation, upon their humble desire, shall have licence under our Broad Seal to deliberate of, and do all such things as being made plain by them, and assented unto by us, shall concern the settled continuance of the Church of England now established.*"

CHAPTER VI.

Concluding Considerations.

If Church Discipline be plainly enjoined in Holy Scripture, if the causes which have interfered with our obedience to this command are likely to be withdrawn, inasmuch as a final divorce will be soon made between spiritual power and state coercion, if some sacred tribunals are essential to the carrying out of what is required, if such tribunals cannot be obtained except through the action of a Church Legislature, it follows that those who reverence God's word, and "pray for the peace of" His spiritual kingdom, should either desire to see that course adopted, which has been described in the preceding pages, or at all events should aim at something by which similar results may be effected.

But before concluding the subject, it will be well to notice some difficulties, which will probably suggest themselves to reflecting minds. There will no doubt be those who will observe, that in the present day one great duty of the clergy is to induce persons to remember the benefits which attend the due use of the Holy Eucharist, that the mass of men are too little inclined to it, and that it would be

idle to place further hinderances in the way of a duty already so insufficiently regarded. Far better it is, they say, for the clergy to go on inviting all devout persons to communicate as frequently as possible. This is the ordinary advice from the pulpit, and how will it suit with a different language from the Lord's table? And do we not hear with satisfaction, and mention with approbation, the numerous bodies of communicants, which zealous and popular ministers have gathered together? Would these bodies have been so great, if scrutiny and selection had been needful?

In all this there is much of truth; yet still the question recurs, is this want of inquiry scriptural? If not, can the outward promise produce real benefit, or may it not be the hollow and insincere show of mere profession? Is it not too much like that state of things which the Apostle censured? "Ye are puffed up, and have not rather mourned, that he which hath done this thing might be taken away from among you." There is something extremely fearful to the considerate mind in the religious condition of the great mass of the christian community. What multitudes are there, who by the courtesy of language are called churchmen, but who are not accustomed by any solemn act of their own to claim participation with their risen Saviour, even if their open sins and avowed worldliness do not show them to be enlisted in the ranks of His enemies! What is the course of their lives? They mix with us as friends and neighbours. We

meet them in our streets, we talk with them in our market-places. Custom or curiosity, rather than any desire of personal benefit, leads them sometimes to the House of GOD. But they do not even pretend to any intimate connexion with the Church, except in the negative particular, that they have not allied themselves to any hostile society. They come under no pastoral relation to the appointed ministers of Christ, except that they may have heard at times their general declarations. They were enrolled, indeed, during infancy, in the Christian family, but of the ties and duties of its family union, they have thought nothing. At length they die, and are no more seen. Their dust is now to return to its native earth. And their friends think it essential that the minister of Christ's Church should give expression to their common thanks to GOD, for taking to Him "the soul of this our dear brother here departed."

Now that it is not the Church's intent that her words should be so employed, has been made apparent. She has authorized no vain hope. She never intended her solemn rites, like untempered mortar, to be a cement for the crumbling edifices of human deceit. How different, if such persons had on certain previous occasions been reminded of the awful realities, on which themselves were so soon to enter! What change might it not have wrought in the temper of their minds? But to be satisfied without any show of repentance and of holiness, to accept, as GOD'S servants, those who

would not even profess to take on them His mild yoke and light burden—what is this but to say that men may live GOD'S enemies, and yet after death be found to be His friends ?

And what is this in reality but to maintain that there is some further state of probation, that it is not true that where the tree falls, there it must lie ; that there is some means, in short, of reconciliation with GOD, for those who have not sought Him in this life. So that we have here an instance how much the Romish errors are rooted in the soil of man's nature, for this popular abuse implies, in truth, the doctrine of Purgatory as its explanation. That bold invention, for which there is confessedly no ground in Holy Scripture, owes its currency in great measure to its harmonizing so well with the corrupt practice of a dissipated age. During the strict period of early faith it was never heard of. But when Christianity had become the religion of the empire, and men desired to be esteemed Christians after their death, who during their life would not act upon their baptismal vows, then was this afterthought patched on to the Gospel scheme, as a middle term between its strictness and man's depravity. Thus, as Discipline died out, did Purgatory come in. This is why the indulgencies, which were designed originally to mitigate the rigours of the first, are still thought by the Romanists to be applicable to the second. But what indulgence can be more plenary than is laid claim to, if confessing that " without holiness no man shall see the

Lord," we yet discern no incongruity in returning GOD thanks for taking to Him the souls of those, who have never even made profession of obedience. True it is that we cannot read the secrets of man's nature, may be deceived by assumed hypocrisy on one hand, and insensible to secret repentance on another, but when there has been no desire to claim communion with GOD, no profession of obedience, what ground is there for expecting us to allow what has never been asserted? How can such a system be exempted from participation in the Romish error, which it necessarily involves? How can it be better described than in the exact language of the Article, as "a fond thing, vainly invented, and grounded on no warranty of Scripture?"

This lax system, moreover, is as little commendable for its practical results as for its authoritative grounds. With the show of inviting, it is the real cause which inclines men to turn their back upon the Lord's Table. For it keeps up the delusion that men can live in peace and die in safety, without that communion with Christ which is essential to the life of our spiritual nature. Or even to look at its lower effects, is it not notorious that men are indisposed to prize what is too easy of acquisition? Let men be told that they may communicate when they will, that they are never to be questioned for their negligence, that the banquet will be made for them every year, that those who now refrain will have another opportunity, and what

wonder if they do not press to the marriage feast, when the door is never to be closed against them.

With well-disposed persons, also, the general admission of all parties is one of the great stumbling-blocks which makes them look with suspicion on the communion of the Church. They need some closer bond. They desire some more binding fellowship. This is the motive which leads vast numbers of Christ's poorer brethren to ally themselves to some separatist body, that so they may be members of a society, in which it can be clearly known who are, and who are not, of their communion; in which they may find a stricter discipline and a more frequent devotion. They become Separatists, as men subjected themselves of old to some monastic vow, for whom the ordinary standard of the public devotion was insufficient. The best remedy to such complaints would be to return to the Church's rules: we need only to put these in execution, and men will see that it is not necessary to separate from the family of Christ, in order to be of the number of His children.

But then it is further objected, that even if Church Discipline could be introduced among the lower classes of society, yet that those of a higher rank would never submit to its enactments. Not to be received for the first time at the Lord's Table, without a previous notice, would be an exaction which such persons could not bring themselves to endure. In proof of which, a story is sometimes adduced, which is told by Alexander Knox of Lord

Chancellor Clare. This nobleman, when disposed late in life to adopt a stricter line of conduct than he had done, would not approach the Lord's Table in any place of public resort, but withdrew to some remote Church in the outskirts of Dublin, where he thought that he should escape observation. Yet if we are to draw our examples from other countries, why may not Scotland be as good a model as Ireland? Is not this usage submitted to by members of the Kirk, who claim blood as pure and wealth as exorbitant as any Englishman? And if Lord A. or the Duke of A. submit to it, why should the rest of the nobility find it so objectionable? If persons go on to observe, that this would imply a submission to the ministers of Christ, not to be expected from the independent spirit of the present day, they should bear in mind the following consideration. We hear it stated as a complaint against those times in which Church Discipline was best observed, that the doctrine of justification by faith was then but imperfectly apprehended, that men were accustomed to attach too much importance to their own merits, and to repose too little on the sacrifice of Christ In these respects, our times are supposed to present a favourable contrast to antiquity, and it is inferred that too great attention to Church Discipline may tend to encourage this dangerous defect.

Now that which makes the doctrine of justification by faith so important, is the clear light in which it brings out the great truth of our Lord's sa-

crifice, once for all, for the sins of men. It sets forth the merit of that grand offering in contradistinction to any notion which men may entertain of their own deservings. The evil therefore, which is opposed to it, is that pride of heart which would rest in the conceit of its own excellence. Its certain consequence is such unfeigned humility, as will form a just appreciation of its own sins and infirmities. But neither will this pride nor this humbleness be shown in the estimation merely of the common deficiencies of mankind, but in the notion which each man will entertain of his individual defects. No one probably was ever so puffed up with pride as to be offended because six feet is a limit to the ordinary stature of mankind, but many have felt hurt at being of more pigmy dimensions than their fellows.

So it is then in the things of the spirit. Real humility, the inseparable consequence of being altogether free from self-dependence, will show itself in a deep sense of individual sins. A man must be strangely constituted, to whom it costs a pang to confess the general peccancy of human nature, but he who is really justified by faith will discern the individual weight of his own offences. He will discern them in their full proportions, and perceive that they are of an amount, for which nothing but the Redeemer's sacrifice can satisfy. In the words of the Prayer-Book, "the remembrance of his sins will be grievous unto him, and the burthen of them intolerable."

Now let this rule be applied to the instance which has been adduced. Let us take the case of an offender withdrawing secretly to an unfrequented neighbourhood, because he could not bear that the witnesses of his former sins should be spectators of his repentance. With this let us contrast a well known scene from the history of the ancient Church;—a scene however in no respect different from that which every day occurred, except that it was recorded by St. Augustine. The individual spoken of shall be also a man of note, distinguished like the person who has been mentioned for his eloquence and ability. He too had determined late in life to undo the practice of his earlier years. And "when the hour was come for making profession of his faith, (which at Rome they who are about to approach to Thy grace, deliver from an elevated place in the sight of all the faithful, in a set form of words committed to memory) the presbyters offered Victorinus (as was done to such as seemed likely through bashfulness to be alarmed) to make his profession more privately: but he chose rather to profess his salvation in the presence of the holy multitude. For it was not salvation that he taught in rhetoric, and yet that he had publicly professed. How much less then ought he, when pronouncing Thy word, to dread Thy meek flock, who when delivering his own words had not feared a mad multitude. When then he went up to make his profession, all as they knew him whispered his name one to another with the

voice of congratulation. And who there knew him not? And there ran a low murmur through all the mouths of the rejoicing multitude, Victorinus! Victorinus! Sudden was the burst of rapture when they saw him, suddenly were they hushed that they might hear him. He pronounced the true faith with an excellent boldness, and all wished to draw him into their very heart."*

Now which of these cases betrays the most real sense of past defects—that in which a man would hide his regret from his nearest fellows, or when his own sense of the greatness of the change obliterates all thought of human spectators? And stronger cases might be adduced, did we take the instances of those, who in dress of mourners and with the language of supplicants, solicited re-admission into the society from which their sins had made them exiles. Now if all this is rendered impossible in the present day by the greater independence of man's temper, we must admit at all events that in a true sense of our deficiencies, and of the need therefore of our Lord's sacrifice, we have no reason to suppose ourselves in advance of earlier days. For unless we confess that the doctrine of justification by faith as held among ourselves is too often a mere painted shadow, how can we suppose those persons to be really penetrated with its importance, whom it does not lead to a lively sense of their own defects? What are we to

* St. Augustine's Confessions, viii. § 5.

say of men who study so much the decency of their regret, and the opinion which may be formed of their penitence by their fellow-creatures? Are *those* true penitents, who cannot bring themselves to the humiliation of desiring to be received afresh into the covenant of Christ's mystic blessings? Either therefore we must abandon this objection against Church Discipline, or the pretence that in our estimate of Christ's sole sacrifice we have made such wide advances must be abandoned for ever.

Nor must it be forgotten that if there are some who would be offended by the return to a more strict rule of discipline, there are others whose complaint is of the want of those soothing remedies, in which the wounded conscience might seek relief. No one can long have had the care of souls without meeting with persons, who were oppressed with the burthen of past sins, and desired nothing so earnestly as some rule of discipline, by which they might find guidance as to the manner and proofs of their repentance. This is not indeed the common case; the generality of persons, though confessing that in general they are offenders, have no such lively sense of sin as to be able to discover their particular grief. They are like the hypochondriac, who tells us he is ill, but cannot say what is his especial sickness. Such conduct is the natural tendency of the age: the effect of that Antinomian carelessness, with which the most thoughtless men have learnt to shield themselves under the general

promises of Scripture. Some however still remain, who have a more genuine tenderness of conscience, and who would gladly be assured that their repentance is sincere, and that their sins therefore are really forgiven.

If such persons fall under the direction of instructors who understand rightly the Church's system, they may doubtless be duly guided, but in how many cases have they to regret the absence of that public order and authorized system, which the Prayer-Book implies, but in which the practice of the Church is wanting? How much rather would they wait to be directed, than put themselves forward to seek for guidance. They desire that the Church should mark out their course, and are unsatisfied in following mere individual suggestions. To tell them that they may judge for themselves, at their own hazard, when their penitence is sincere, and whether or no to approach the Lord's table, is to cast upon individuals the very responsibility, from which the public order of the Christian ministry was instituted to relieve them. Did St. Paul cast this responsibility upon the offending Corinthian? Did not he provide for the case by a definite law which could not be mistaken? What cruelty is it then not to give relief to such persons, by providing that the authorized ministry of the word shall of itself bring them in contact with those, who are instructed, and have authority to deal with them. It should not be left to them to search out and invent a remedy for their difficulties: the

Church's general duty is to show herself prepared beforehand to administer relief. And who should be more regarded than those who are really suffering under sense of sin, who need comfort under their distress, and guidance under their perplexities? Theirs is the broken reed and smoking flax, which the merciful Redeemer thought worthy of especial tenderness. These are the Church's children, whose bread we may not waste, in a fruitless attempt to make Christ's banquet palatable to the worldly and luxurious.

There is no reason then, why the authorized directors of the Church should refrain from taking such steps, as may lead to an enforcement of those rubrical orders which respect Church Discipline. There is no reason why they should not require previous notice from all new attendants at the Lord's table—why they should not agree upon some method for the exclusion of unworthy communicants, (as provided in the rubrics before the communion office)—lastly, why they should allow the clergy to use Church-offices for those who are not Church-men. One further point only shall be noticed in conclusion, the feeling, namely, which has been already alluded to, that such matters were better left to the independent action of our existing Diocesans. Now the direct answer to this, already given, is that some legislative orders are needed to give effect to these rules, and that neither by the law of the land, nor by the law of the English Church, do our Bishops possess by themselves any

legislative power. The question is not therefore whether any other constitution would be better, but whether, till a better is provided for us, we shall use the one we possess.

That our Bishops possess no such power at present is beyond dispute: the law of the land can emanate from no body but the Imperial Parliament, and legislative authority in the Church has been given in express words to the Bishops and Clergy in Convocation. This is the statement of the 139th canon, "agreed upon," "*in their Synod* begun at London, A. D. 1603."

"Authority *of Synods.*

A national *Synod* the Church Representative.

Whosoever shall hereafter affirm that the Sacred Synod of this nation in the name of the Church, and by the King's authority assembled, is not the true Church of England by representation, let him be excommunicated."

Such is the present constitution of the English Church, and it has been already observed that it is by no means so opposite to primitive usage as might at first sight be supposed. The subject is not noticed in this place with a view of resuming the discussion of the conformity of this usage to ancient rules, but with a view of noticing its practical consequence.

There is nothing then, which though it might seem to limit the Bishop's power, would in fact so greatly increase it, as a renewal of synodical action.

It was said of old that the Prince who limited Spartan rule, left it in fact greater, because more secure. And this must ever be the case in an institution like the Church, compacted merely by voluntary acquiescence, where the power of rulers depends on their carrying with them the willing assent of an attached people. Let the lower clergy feel that they have a voice in what is decided, that their wishes are consulted, and their wants known, and the moral influence of their leaders—without which power in this country is but an unmanageable weapon—would become irresistible.

Now how can this be so naturally and so safely effected as through the existence of a lower house of Convocation, consisting on the one hand of the representatives of the clergy, and on the other of persons appointed by the Bishops themselves? When backed in this manner by the unanimous voice of the Church, with what confidence would they proceed in every reform. They would be in no danger of committing themselves to steps,—like the suppression of the See of Sodor and Man, not to take a more present instance,—which the unanimous reclamations of the inferior clergy must make them desirous to recall. They would either advance with greater safety, or stand still with greater satisfaction. The necessary result of the contrary system may be seen in the lamentable condition of things during the last century—on the one hand might be seen clergymen whose conduct called loudly for restraint and censure—and Bishops

on the other who felt that they were too unpopular to venture upon measures of reform. Yet such must ever be the case, among a free people, when mere force is substituted in the place of influence. From such difficulties we might now be free. No disputed succession divides the nation. No doubt as to the truth or excellence of our formularies divides the Church. The character of our clergy has advanced with the popularity of their rulers. Disputes indeed there are, but their remedy is not rest, but action. Let the Church but move on in her divine warfare, and many who are now ready to turn their weapons against one another, would then vie in service against the common foe. We need only to have a path laid open to our attempts, in that direction which GOD'S law requires, and in which the leaders of our Reformation have invited us to advance.

To you, then, reverend Fathers, I make my appeal. I beseech you to consider the power which you possess, in that ready submission with which the clergy of the Church of England would answer to your call. The greatest body of educated persons in the country, toiling in calm obedience along their unnoticed path, enduring patiently the persecution of lawless, and the contempt of ambitious men, they wait but your signal to act together with a promptitude, which no other class either would or could display. This thought surely may teach the abiding truth of that, which was spoken to the original possessors of your office; "if ye have faith

as a grain of mustard seed, ye shall say unto this mountain, be thou plucked up, and be thou planted in the sea, and it shall obey you." This promise proved true to those twelve disciples who first reared the mountain of the Lord's house, and why should it be less applicable to the successors of the Apostles? I may be accused of an hereditary aptitude to believe the possibility of great reforms—and I am not careful to deny the imputation. But of this I am confident, that the great practical deficiency of the present day is in that quality of which in theory there is most profession—*The age is without faith.* Have not those very principles of policy and of literature, which were laughed to scorn by the last generation, been adopted as axioms by our own? Sixty years ago, who had ventured to arraign the Slave Trade even in a British House of Commons, while it is now condemned by the consentient voice of collective Europe. How many maxims and customs of a past age have been discarded as unanimously as they were approved? Have not taste and art gone through a total revolution? What need we then but FAITH to see the manners of men reformed? The Word of GOD at all events is a standard, which admits of no variation; and so long as the Prayer-Book of the Church continues to embody its yearly complaint, the time can never be gone by for a return to CHURCH DISCIPLINE.

The following Petitions were unanimously agreed upon at a Meeting of the Clergy of the Archdeaconry of the East Riding, held at Beverley, after public notice, on the 19th January, 1843.

To the Queen's Most excellent Majesty,

The humble Petition of the Archdeacon and Clergy of the Archdeaconry of the East Riding of the County of York, and of others of the Clergy resident within the limits of the said Archdeaconry.

Sheweth,

That your Petitioners approach your Majesty with the dutiful assurance of their devoted attachment and loyalty to your Majesty's person and government. That your petitioners humbly beg leave to represent to your Majesty, that of late years various measures have been adopted and opinions maintained and upheld by the legislature and other authorities of this country, as well as by large and influential bodies of individuals, deeply, and, in the judgment of your Petitioners, injuriously affecting the doctrines and discipline, as well as ancient and undoubted rights and privileges of the Church of England, her Bishops and Clergy; that your petitioners have been informed, and verily believe, that other measures of like dangerous tendency are in contemplation: that by the ancient laws and constitution of this realm, all measures, legal alterations and changes affecting the Doctrines, Discipline, Rights and Privileges aforesaid, ought previously to their final adoption, to be submitted to the consideration, and sanctioned by the concurrence of the Bishops and Clergy of the Church in Convocation assembled: and that in conformity therewith, one of your Majesty's Royal Predecessors, King Charles the First, did in his Royal Declaration, by which he ratified and confirmed the Articles of Religion, professed and maintained by the said Church, declare and

promise that " out of his princely care that the Churchmen " might do the work that was proper unto them, the " Bishops and Clergy from time to time in Convocation " upon their humble desire, should have Licence under his " Majesty's broad Seal to deliberate of and to do all such " things as being made plain by them, and assented unto " by his said Majesty, should concern the settled continu- " ance of the Doctrine and Discipline of the Church of " England, as then established, from which his said " Majesty declared that he would not endure any varying " or departing in the least degree." That your petitioners further beg leave humbly to represent to your Majesty, that no such licence as aforesaid has been issued in conformity with the said gracious declaration of your said Majesty's Royal Predecessor, for a period of one hundred and twenty-five years now last past, whereby the Bishops and Clergy have been deprived of the power to deliberate and act as aforesaid: and that in the opinion of your petitioners, it is to this cause that the said injurious measures and opinions above mentioned are to be mainly attributed; and your petitioners further beg leave humbly to represent, that the Ministers of the Religion established by Law in Scotland, as well as those of every sect and denomination of Religion in England, enjoy the full and free privilege of synodical action, and that it is not enjoyed by the Bishops and Clergy of the Church of England alone. Wherefore your petitioners beg leave to present to your Majesty their humble petition, and desire that your Majesty in conformity with the said declaration and promise of your Majesty's said Royal Predecessor, will be graciously pleased to issue your Royal Licence to the said Bishops and Clergy to deliberate of, and do all such things in Convocation, as shall concern the settled continuance of the Doctrines and Discipline of the Church of England, by Law established.

And your petitioners will ever pray.

To the Lord Bishop of Salisbury.

My Lord,

I have the honour to inform your Lordship, that I have not failed to lay before the Queen, the address of the Archdeacon and Clergy of the East Riding of the County of York, transmitted to me by your Lordship in the absence of His Grace the Archbishop of York, praying that Her Majesty will be graciously pleased to grant the Royal Licence for the Clergy assembled in Convocation to deliberate on matters relating to the doctrine and the Discipline of the Established Church.

I have the honour to be,

My Lord,

Your Lordship's very obedient servant,

James Graham.

Whitehall, February 13, 1843.

To the Honourable the Commons, &c. in Parliament assembled.

The humble petition of the Archdeacon and Clergy of the Archdeaconry of the East Riding of the County of York, and of other of the Clergy resident within the limits of the said Archdeaconry.

Sheweth,

That your Petitioners have learned with great anxiety that it is intended to introduce into your honourable house under the Sanction of Her Majesty's Government, a Bill greatly altering the constitution of the Spiritual Courts of England and Wales: that your petitioners are of opinion that certain material changes are needed in the said Courts, but that very many of the powers exercised by the said Courts, and the questions submitted to their decision, are

of a nature wholly or in part Spiritual, and deeply affecting the Doctrine, Discipline and Polity of the Church of England; that for the due exercise of such powers and the satisfactory settlement of such questions, it is necessary that the advice and assistance should be had of persons who by a long course of study and professional education, are well imbued with sound principles of religious knowledge and theological learning; and more particularly with the Doctrines, Discipline and Polity of the Church of England, as declared and maintained in her Articles, Liturgy, Constitutions and Canons: and that such qualifications can in the ordinary course of affairs, be only expected or found to exist in the Bishops and Clergy of the said Church: and that for want of such advice and assistance as aforesaid, various errors in Spiritual Doctrine, and various infractions of the Rights and Privileges of the said Church have received the Sanction of public Authority: and your petitioners would further beg leave humbly to represent to your honourable House, that whatever power of spiritual discipline still exists in the Church, is capable of being exercised only through the medium of the Ecclesiastical Courts: that it is only by means of these Courts, that spiritual offences can in any manner be visited by the censures of the Church, or that, as a last resource, unworthy members can be cut off from the fellowship of the body of Christ: but that the exercise of this high and necessary power, hath in all ages of the Church of Christ and in every portion of it, but more especially in the Constitutions and Canons of that pure and reformed part of it now happily established in England, been recognised as absolutely and essentially inherent in the Church alone: that the exercise of this authority is solemnly referred to in the Service appointed to be used in the Church at the Consecration of every Bishop, as being a duty committed to him not only by the ordinances of the realm, but also by the word of God: but that the removal of this power, supposing that the said Courts should be abolished, without the substitution of some other legitimate means of spiritual superintendence in their stead, will wrest from the Bishop

that controul and superintendence, to which he himself stands pledged by his own oath of office, made in the face of the Church at his Consecration. And your petitioners further beg leave humbly to represent that his Majesty King Charles the First did in his Royal Declaration, ratifying the Articles of the Church, solemnly declare that "if any dif- "ference should arise about the external Policy concerning "the Injunctions, Canons, and other Constitutions what- "soever to the Church of England belonging, the Clergy "in their Convocation were to order and settle them:" that the question of the maintenance or abolition of the Ecclesiastical Courts, and any question touching the subtraction, diminution, or other alteration of their power in spiritual affairs, are questions arising about the external Policy of the said Church, and vitally concerning various Injunctions, Canons and other Constitutions thereto belonging: Wherefore your petitioners do humbly pray your Honourable House, that no Bill which may be preferred to your Honourable House either for the abolition of the spiritual Courts, or for the purpose of diminishing or otherwise materially affecting their Jurisdiction and Authority, may be permitted to pass into a Law, until the Bishops and Clergy in Convocation, shall have had an opportunity of deliberating thereon and of expressing their opinion on the subject. And your petitioners will ever pray, &c.

Henry Mozley and Sons, Printers, Derby.

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